INTERNAL REVENUE
BULLETIN

Bulletin No. 2019–11
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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE

Rev. Rul. 2019–05, page 766.

Interest rates: underpayments and overpayments. The rates for interest determined under Section 6621 of the code for the calendar quarter beginning April 1, 2019, will be 6 percent for overpayments (5 percent in the case of a corporation), 6 percent for underpayments, and 8 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 3.5 percent.

T.D. 9844, page 781.

These final regulations provide rules implementing the centralized partnership audit regime enacted as part of the Bipartisan Budget Act of 2015, which was amended by the Tax Technical Corrections Act of 2018. These final regulations provide guidance on the scope of the regime, the requirement for consistent reporting, the calculation and modification of imputed underpayments, the push out election, administrative adjustment requests, notices, assessment, penalties, interest, judicial review, period of limitations, and definitions and special rules, including rules for coordination with chapters 2, 2A, 3, and 4.

INCOME TAX

T.D. 9848, page 897.

These final regulations address the compliance-monitoring duties of a state or local housing credit agency under section 42 of the Internal Revenue Code. The final regulations revise and clarify certain rules relating to the requirement to conduct physical inspections and review of low-income certifications under § 1.42–5.

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 6621. Determination of Rate of Interest

26 CFR 301.6621–1: Interest rate.

Rev. Rul. 2019–05

Section 6621 of the Internal Revenue Code establishes the interest rates on overpayments and underpayments of tax. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See section 6621(c) and section 301.6621–3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621–3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter. Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any monthapplies during the first calendar quarter beginning after that month. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88–59, 1988–1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

The federal short-term rate determined in accordance with section 1274(d) during January 2019 is the rate published in Revenue Ruling 2019–4, 2019–7 IRB 567, to take effect beginning February 1, 2019. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of January 2019 is 3 percent. Accordingly, an overpayment rate of 6 percent (5 percent in the case of a corporation) and an underpayment rate of 6 percent are established for the calendar quarter beginning April 1, 2019. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning April 1, 2019 is 3.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning April 1, 2019, is 8 percent. These rates apply to amounts bearing interest during that calendar quarter.

Sections 6654(a)(1) and 6655(a)(1) provide that the underpayment rate established under section 6621 applies in determining the addition to tax under sections 6654 and 6655 for failure to pay estimated tax for any taxable year. Thus, the 6 percent rate also applies to estimated tax underpayments for the second calendar quarter beginning April 1, 2019. Pursuant to section 6621(b)(2)(B), in determining the addition to tax under section 6654 for any taxable year for an individual, the federal short-term rate that applies during the third month following the taxable year also applies during the first 15 days of the fourth month following the taxable year. See Rev. Rul. 2018–32, 2019–51 IRB 1023 (6 percent rate for the first quarter of 2019). In addition, pursuant to section 6603(d)(4), the rate of interest on section 6603 deposits is 3 percent for the second calendar quarter in 2019.

Interest factors for daily compound interest for annual rates of 3.5 percent, 5 percent, 6 percent and 8 percent are published in Tables 12, 15, 17 and 21 of Rev. Proc. 95–17, 1995–1 C.B. 566, 569, 571 and 575.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue ruling, contact Mr. Conrad at (202) 317-6844 (not a toll-free number).

APPENDIX A

365 Day Year 0.5% Compound Rate 184 Days					
Days	Factor	Days	Factor	Days	Factor
1	0.000013699	63	0.000863380	125	0.001713784
2	0.000027397	64	0.000877091	126	0.001727506
3	0.000041096	65	0.000890801	127	0.001741228
4	0.000054796	66	0.000904512	128	0.001754951
5	0.000068495	67	0.000918223	129	0.001768673
6	0.000082195	68	0.000931934	130	0.001782396
7	0.000095894	69	0.000945646	131	0.001796119
8	0.000109594	70	0.000959357	132	0.001809843
9	0.000123294	71	0.000973069	133	0.001823566
10	0.000136995	72	0.000986781	134	0.001837290
11	0.000150695	73	0.001000493	135	0.001851013
12	0.000164396	74	0.001014206	136	0.001864737
13	0.000178097	75	0.001027918	137	0.001878462
14	0.000191798	76	0.001041631	138	0.001892186
15	0.000205499	77	0.001055344	139	0.001905910
16	0.000219201	78	0.001069057	140	0.001919635
17	0.000232902	79	0.001082770	141	0.001933360
18	0.000246604	80	0.001096484	142	0.001947085
19	0.000260306	81	0.001110197	143	0.001960811
20	0.000274008	82	0.001123911	144	0.001974536
21	0.000287711	83	0.001137625	145	0.001988262
22	0.000301413	84	0.001151339	146	0.002001988
23	0.000315116	85	0.001165054	147	0.002015714
24	0.000328819	86	0.001178768	148	0.002029440
25	0.000342522	87	0.001192483	149	0.002043166
26	0.000356225	88	0.001206198	150	0.002056893
27	0.000369929	89	0.001219913	151	0.002070620
28	0.000383633	90	0.001233629	152	0.002084347
29	0.000397336	91	0.001247344	153	0.002098074
30	0.000411041	92	0.001261060	154	0.002111801
31	0.000424745	93	0.001274776	155	0.002125529
32	0.000438449	94	0.001288492	156	0.002139257
33	0.000452154	95	0.001302208	157	0.002152985
34	0.000465859	96	0.001315925	158	0.002166713
35	0.000479564	97	0.001329641	159	0.002180441
36	0.000493269	98	0.001343358	160	0.002194169
37	0.000506974	99	0.001357075	161	0.002207898
38	0.000520680	100	0.001370792	162	0.002221627
39	0.000534386	101	0.001384510	163	0.002235356
40	0.000548092	102	0.001398227	164	0.002249085
41	0.000561798	103	0.001411945	165	0.002262815
42	0.000575504	104	0.001425663	166	0.002276544
43	0.000589211	105	0.001439381	167	0.002290274
44	0.000602917	106	0.001453100	168	0.002304004

365 Day Year 0.5% Compound Rate 184 Days					
Days	Factor	Days	Factor	Days	Factor
45	0.000616624	107	0.001466818	169	0.002317734
46	0.000630331	108	0.001480537	170	0.002331465
47	0.000644039	109	0.001494256	171	0.002345195
48	0.000657746	110	0.001507975	172	0.002358926
49	0.000671454	111	0.001521694	173	0.002372657
50	0.000685161	112	0.001535414	174	0.002386388
51	0.000698869	113	0.001549133	175	0.002400120
52	0.000712578	114	0.001562853	176	0.002413851
53	0.000726286	115	0.001576573	177	0.002427583
54	0.000739995	116	0.001590293	178	0.002441315
55	0.000753703	117	0.001604014	179	0.002455047
56	0.000767412	118	0.001617734	180	0.002468779
57	0.000781121	119	0.001631455	181	0.002482511
58	0.000794831	120	0.001645176	182	0.002496244
59	0.000808540	121	0.001658897	183	0.002509977
60	0.000822250	122	0.001672619	184	0.002523710
61	0.000835960	123	0.001686340		
62	0.000849670	124	0.001700062		

366 Day Year 0.5% Compound Rate 184 Days					
Days	Factor	Days	Factor	Days	Factor
1	0.000013661	63	0.000861020	125	0.001709097
2	0.000027323	64	0.000874693	126	0.001722782
3	0.000040984	65	0.000888366	127	0.001736467
4	0.000054646	66	0.000902040	128	0.001750152
5	0.000068308	67	0.000915713	129	0.001763837
6	0.000081970	68	0.000929387	130	0.001777522
7	0.000095632	69	0.000943061	131	0.001791208
8	0.000109295	70	0.000956735	132	0.001804893
9	0.000122958	71	0.000970409	133	0.001818579
10	0.000136620	72	0.000984084	134	0.001832265
11	0.000150283	73	0.000997758	135	0.001845951
12	0.000163947	74	0.001011433	136	0.001859638
13	0.000177610	75	0.001025108	137	0.001873324
14	0.000191274	76	0.001038783	138	0.001887011
15	0.000204938	77	0.001052459	139	0.001900698
16	0.000218602	78	0.001066134	140	0.001914385
17	0.000232266	79	0.001079810	141	0.001928073
18	0.000245930	80	0.001093486	142	0.001941760
19	0.000259595	81	0.001107162	143	0.001955448
20	0.000273260	82	0.001120839	144	0.001969136
21	0.000286924	83	0.001134515	145	0.001982824
22	0.000300590	84	0.001148192	146	0.001996512

366 Day Year
0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
23	0.000314255	85	0.001161869	147	0.002010201
24	0.000327920	86	0.001175546	148	0.002023889
25	0.000341586	87	0.001189223	149	0.002037578
26	0.000355252	88	0.001202900	150	0.002051267
27	0.000368918	89	0.001216578	151	0.002064957
28	0.000382584	90	0.001230256	152	0.002078646
29	0.000396251	91	0.001243934	153	0.002092336
30	0.000409917	92	0.001257612	154	0.002106025
31	0.000423584	93	0.001271291	155	0.002119715
32	0.000437251	94	0.001284969	156	0.002133405
33	0.000450918	95	0.001298648	157	0.002147096
34	0.000464586	96	0.001312327	158	0.002160786
35	0.000478253	97	0.001326006	159	0.002174477
36	0.000491921	98	0.001339685	160	0.002188168
37	0.000505589	99	0.001353365	161	0.002201859
38	0.000519257	100	0.001367044	162	0.002215550
39	0.000532925	101	0.001380724	163	0.002229242
40	0.000546594	102	0.001394404	164	0.002242933
41	0.000560262	103	0.001408085	165	0.002256625
42	0.000573931	104	0.001421765	166	0.002270317
43	0.000587600	105	0.001435446	167	0.002284010
44	0.000601269	106	0.001449127	168	0.002297702
45	0.000614939	107	0.001462808	169	0.002311395
46	0.000628608	108	0.001476489	170	0.002325087
47	0.000642278	109	0.001490170	171	0.002338780
48	0.000655948	110	0.001503852	172	0.002352473
49	0.000669618	111	0.001517533	173	0.002366167
50	0.000683289	112	0.001531215	174	0.002379860
51	0.000696959	113	0.001544897	175	0.002393554
52	0.000710630	114	0.001558580	176	0.002407248
53	0.000724301	115	0.001572262	177	0.002420942
54	0.000737972	116	0.001585945	178	0.002434636
55	0.000751643	117	0.001599628	179	0.002448331
56	0.000765315	118	0.001613311	180	0.002462025
57	0.000778986	119	0.001626994	181	0.002475720
58	0.000792658	120	0.001640678	182	0.002489415
59	0.000806330	121	0.001654361	183	0.002503110
60	0.000820003	122	0.001668045	184	0.002516806
61	0.000833675	123	0.001681729		
62	0.000847348	124	0.001695413		

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975–Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976–Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978–Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980–Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982–Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983–Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983–Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984–Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984–Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985–Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985–Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986–Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986–Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987–Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987–Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987–Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987–Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988–Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988–Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988–Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988–Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989–Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989–Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989–Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989–Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990–Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990–Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990–Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990–Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991–Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991–Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991–Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991–Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992–Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992–Jun. 30, 1992	7%	67	621	8%	69	623

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998

	OVERPAYMENTS	1995–1 C.B.		UNDERPAYMENTS	1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jul. 1, 1992–Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992–Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993–Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993–Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993–Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993–Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994–Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994–Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994–Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994–Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995–Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995–Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995–Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995–Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996–Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996–Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996–Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996–Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997–Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997–Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997–Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997–Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998–Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998–Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998–Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998–Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

		1995–1 C.B.	
	RATE	TABLE	PAGE
Jan. 1, 1999–Mar. 31, 1999	7%	19	573
Apr. 1, 1999–Jun. 30, 1999	8%	21	575
Jul. 1, 1999–Sep. 30, 1999	8%	21	575
Oct. 1, 1999–Dec. 31, 1999	8%	21	575
Jan. 1, 2000–Mar. 31, 2000	8%	69	623
Apr. 1, 2000–Jun. 30, 2000	9%	71	625
Jul. 1, 2000–Sep. 30, 2000	9%	71	625
Oct. 1, 2000–Dec. 31, 2000	9%	71	625
Jan. 1, 2001–Mar. 31, 2001	9%	23	577
Apr. 1, 2001–Jun. 30, 2001	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Jul. 1, 2001–Sep. 30, 2001	7%	19	573
Oct. 1, 2001–Dec. 31, 2001	7%	19	573
Jan. 1, 2002–Mar. 31, 2002	6%	17	571
Apr. 1, 2002–Jun. 30, 2002	6%	17	571
Jul. 1, 2002–Sep. 30, 2002	6%	17	571
Oct. 1, 2002–Dec. 31, 2002	6%	17	571
Jan. 1, 2003–Mar. 31, 2003	5%	15	569
Apr. 1, 2003–Jun. 30, 2003	5%	15	569
Jul. 1, 2003–Sep. 30, 2003	5%	15	569
Oct. 1, 2003–Dec. 31, 2003	4%	13	567
Jan. 1, 2004–Mar. 31, 2004	4%	61	615
Apr. 1, 2004–Jun. 30, 2004	5%	63	617
Jul. 1, 2004–Sep. 30, 2004	4%	61	615
Oct. 1, 2004–Dec. 31, 2004	5%	63	617
Jan. 1, 2005–Mar. 31, 2005	5%	15	569
Apr. 1, 2005–Jun. 30, 2005	6%	17	571
Jul. 1, 2005–Sep. 30, 2005	6%	17	571
Oct. 1, 2005–Dec. 31, 2005	7%	19	573
Jan. 1, 2006–Mar. 31, 2006	7%	19	573
Apr. 1, 2006–Jun. 30, 2006	7%	19	573
Jul. 1, 2006–Sep. 30, 2006	8%	21	575
Oct. 1, 2006–Dec. 31, 2006	8%	21	575
Jan. 1, 2007–Mar. 31, 2007	8%	21	575
Apr. 1, 2007–Jun. 30, 2007	8%	21	575
Jul. 1, 2007–Sep. 30, 2007	8%	21	575
Oct. 1, 2007–Dec. 31, 2007	8%	21	575
Jan. 1, 2008–Mar. 31, 2008	7%	67	621
Apr. 1, 2008–Jun. 30, 2008	6%	65	619
Jul. 1, 2008–Sep. 30, 2008	5%	63	617
Oct. 1, 2008–Dec. 31, 2008	6%	65	619
Jan. 1, 2009–Mar. 31, 2009	5%	15	569
Apr. 1, 2009–Jun. 30, 2009	4%	13	567
Jul. 1, 2009–Sep. 30, 2009	4%	13	567
Oct. 1, 2009–Dec. 31, 2009	4%	13	567
Jan. 1, 2010–Mar. 31, 2010	4%	13	567
Apr. 1, 2010–Jun. 30, 2010	4%	13	567
Jul. 1, 2010–Sep. 30, 2010	4%	13	567
Oct. 1, 2010–Dec. 31, 2010	4%	13	567
Jan. 1, 2011–Mar. 31, 2011	3%	11	565
Apr. 1, 2011–Jun. 30, 2011	4%	13	567
Jul. 1, 2011–Sep. 30, 2011	4%	13	567
Oct. 1, 2011–Dec. 31, 2011	3%	11	565
Jan. 1, 2012–Mar. 31, 2012	3%	59	613

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Apr. 1, 2012–Jun. 30, 2012	3%	59	613
Jul. 1, 2012–Sep. 30, 2012	3%	59	613
Oct. 1, 2012–Dec. 31, 2012	3%	59	613
Jan. 1, 2013–Mar. 31, 2013	3%	11	565
Apr. 1, 2013–Jun. 30, 2013	3%	11	565
Jul. 1, 2013–Sep. 30, 2013	3%	11	565
Oct. 1, 2013–Dec. 31, 2013	3%	11	565
Jan. 1, 2014–Mar. 31, 2014	3%	11	565
Apr. 1, 2014–Jun. 30, 2014	3%	11	565
Jul. 1, 2014–Sep. 30, 2014	3%	11	565
Oct. 1, 2014–Dec. 31, 2014	3%	11	565
Jan. 1, 2015–Mar. 31, 2015	3%	11	565
Apr. 1, 2015–Jun. 30, 2015	3%	11	565
Jul. 1, 2015–Sep. 30, 2015	3%	11	565
Oct. 1, 2015–Dec. 31, 2015	3%	11	565
Jan. 1, 2016–Mar. 31, 2016	3%	59	613
Apr. 1, 2016–Jun. 30, 2016	4%	61	615
Jul. 1, 2016–Sep. 30, 2016	4%	61	615
Oct. 1, 2016–Dec. 31, 2016	4%	61	615
Jan. 1, 2017–Mar. 31, 2017	4%	13	567
Apr. 1, 2017–Jun. 30, 2017	4%	13	567
Jul. 1, 2017–Sep. 30, 2017	4%	13	567
Oct. 1, 2017–Dec. 31, 2017	4%	13	567
Jan. 1, 2018–Mar. 31, 2018	4%	13	567
Apr. 1, 2018–Jun. 30, 2018	5%	15	569
Jul. 1, 2018–Sep. 30, 2018	5%	15	569
Oct. 1, 2018–Dec. 31, 2018	5%	15	569
Jan. 1, 2019–Mar. 31, 2019	6%	17	571
Apr. 1, 2019–Jun. 30, 2019	6%	17	571

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1999–Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999–Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999–Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999–Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000–Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000–Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000–Sep. 30, 2000	8%	69	623	9%	71	625

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Oct. 1, 2000–Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001–Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001–Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001–Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001–Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002–Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002–Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002–Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002–Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003–Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003–Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003–Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003–Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004–Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004–Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004–Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004–Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005–Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005–Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005–Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005–Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006–Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006–Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006–Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006–Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007–Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007–Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007–Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007–Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008–Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008–Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008–Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008–Dec. 31, 2008	5%	63	617	6%	65	619
Jan. 1, 2009–Mar. 31, 2009	4%	13	567	5%	15	569
Apr. 1, 2009–Jun. 30, 2009	3%	11	565	4%	13	567
Jul. 1, 2009–Sep. 30, 2009	3%	11	565	4%	13	567
Oct. 1, 2009–Dec. 31, 2009	3%	11	565	4%	13	567
Jan. 1, 2010–Mar. 31, 2010	3%	11	565	4%	13	567
Apr. 1, 2010–Jun. 30, 2010	3%	11	565	4%	13	567
Jul. 1, 2010–Sep. 30, 2010	3%	11	565	4%	13	567
Oct. 1, 2010–Dec. 31, 2010	3%	11	565	4%	13	567
Jan. 1, 2011–Mar. 31, 2011	2%	9	563	3%	11	565
Apr. 1, 2011–Jun. 30, 2011	3%	11	565	4%	13	567

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jul. 1, 2011–Sep. 30, 2011	3%	11	565	4%	13	567
Oct. 1, 2011–Dec. 31, 2011	2%	9	563	3%	11	565
Jan. 1, 2012–Mar. 31, 2012	2%	57	611	3%	59	613
Apr. 1, 2012–Jun. 30, 2012	2%	57	611	3%	59	613
Jul. 1, 2012–Sep. 30, 2012	2%	57	611	3%	59	613
Oct. 1, 2012–Dec. 31, 2012	2%	57	611	3%	59	613
Jan. 1, 2013–Mar. 31, 2013	2%	9	563	3%	11	565
Apr. 1, 2013–Jun. 30, 2013	2%	9	563	3%	11	565
Jul. 1, 2013–Sep. 30, 2013	2%	9	563	3%	11	565
Oct. 1, 2013–Dec. 31, 2013	2%	9	563	3%	11	565
Jan. 1, 2014–Mar. 31, 2014	2%	9	563	3%	11	565
Apr. 1, 2014–Jun. 30, 2014	2%	9	563	3%	11	565
Jul. 1, 2014–Sep. 30, 2014	2%	9	563	3%	11	565
Oct. 1, 2014–Dec. 31, 2014	2%	9	563	3%	11	565
Jan. 1, 2015–Mar. 31, 2015	2%	9	563	3%	11	565
Apr. 1, 2015–Jun. 30, 2015	2%	9	563	3%	11	565
Jul. 1, 2015–Sep. 30, 2015	2%	9	563	3%	11	565
Oct. 1, 2015–Dec. 31, 2015	2%	9	563	3%	11	565
Jan. 1, 2016–Mar. 31, 2016	2%	57	611	3%	59	613
Apr. 1, 2016–Jun. 30, 2016	3%	59	613	4%	61	615
Jul. 1, 2016–Sep. 30, 2016	3%	59	613	4%	61	615
Oct. 1, 2016–Dec. 31, 2016	3%	59	613	4%	61	615
Jan. 1, 2017–Mar. 31, 2017	3%	11	565	4%	13	567
Apr. 1, 2017–Jun. 30, 2017	3%	11	565	4%	13	567
Jul. 1, 2017–Sep. 30, 2017	3%	11	565	4%	13	567
Oct. 1, 2017–Dec. 31, 2017	3%	11	565	4%	13	567
Jan. 1, 2018–Mar. 31, 2018	3%	11	565	4%	13	567
Apr. 1, 2018–Jun. 30, 2018	4%	13	567	5%	15	569
Jul. 1, 2018–Sep. 30, 2018	4%	13	567	5%	15	569
Oct. 1, 2018–Dec. 31, 2018	4%	13	567	5%	15	569
Jan. 1, 2019–Mar. 31, 2019	5%	15	569	6%	17	571
Apr. 1, 2019–Jun. 30, 2019	5%	15	569	6%	17	571

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

		1995–1 C.B.	
	RATE	TABLE	PG
Jan. 1, 1991–Mar. 31, 1991	13%	31	585
Apr. 1, 1991–Jun. 30, 1991	12%	29	583
Jul. 1, 1991–Sep. 30, 1991	12%	29	583

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 1991–Dec. 31, 1991	12%	29	583
Jan. 1, 1992–Mar. 31, 1992	11%	75	629
Apr. 1, 1992–Jun. 30, 1992	10%	73	627
Jul. 1, 1992–Sep. 30, 1992	10%	73	627
Oct. 1, 1992–Dec. 31, 1992	9%	71	625
Jan. 1, 1993–Mar. 31, 1993	9%	23	577
Apr. 1, 1993–Jun. 30, 1993	9%	23	577
Jul. 1, 1993–Sep. 30, 1993	9%	23	577
Oct. 1, 1993–Dec. 31, 1993	9%	23	577
Jan. 1, 1994–Mar. 31, 1994	9%	23	577
Apr. 1, 1994–Jun. 30, 1994	9%	23	577
Jul. 1, 1994–Sep. 30, 1994	10%	25	579
Oct. 1, 1994–Dec. 31, 1994	11%	27	581
Jan. 1, 1995–Mar. 31, 1995	11%	27	581
Apr. 1, 1995–Jun. 30, 1995	12%	29	583
Jul. 1, 1995–Sep. 30, 1995	11%	27	581
Oct. 1, 1995–Dec. 31, 1995	11%	27	581
Jan. 1, 1996–Mar. 31, 1996	11%	75	629
Apr. 1, 1996–Jun. 30, 1996	10%	73	627
Jul. 1, 1996–Sep. 30, 1996	11%	75	629
Oct. 1, 1996–Dec. 31, 1996	11%	75	629
Jan. 1, 1997–Mar. 31, 1997	11%	27	581
Apr. 1, 1997–Jun. 30, 1997	11%	27	581
Jul. 1, 1997–Sep. 30, 1997	11%	27	581
Oct. 1, 1997–Dec. 31, 1997	11%	27	581
Jan. 1, 1998–Mar. 31, 1998	11%	27	581
Apr. 1, 1998–Jun. 30, 1998	10%	25	579
Jul. 1, 1998–Sep. 30, 1998	10%	25	579
Oct. 1, 1998–Dec. 31, 1998	10%	25	579
Jan. 1, 1999–Mar. 31, 1999	9%	23	577
Apr. 1, 1999–Jun. 30, 1999	10%	25	579
Jul. 1, 1999–Sep. 30, 1999	10%	25	579
Oct. 1, 1999–Dec. 31, 1999	10%	25	579
Jan. 1, 2000–Mar. 31, 2000	10%	73	627
Apr. 1, 2000–Jun. 30, 2000	11%	75	629
Jul. 1, 2000–Sep. 30, 2000	11%	75	629
Oct. 1, 2000–Dec. 31, 2000	11%	75	629
Jan. 1, 2001–Mar. 31, 2001	11%	27	581
Apr. 1, 2001–Jun. 30, 2001	10%	25	579
Jul. 1, 2001–Sep. 30, 2001	9%	23	577
Oct. 1, 2001–Dec. 31, 2001	9%	23	577
Jan. 1, 2002–Mar. 31, 2002	8%	21	575
Apr. 1, 2002–Jun. 30, 2002	8%	21	575

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jul. 1, 2002–Sep. 30, 2002	8%	21	575
Oct. 1, 2002–Dec. 31, 2002	8%	21	575
Jan. 1, 2003–Mar. 31, 2003	7%	19	573
Apr. 1, 2003–Jun. 30, 2003	7%	19	573
Jul. 1, 2003–Sep. 30, 2003	7%	19	573
Oct. 1, 2003–Dec. 31, 2003	6%	17	571
Jan. 1, 2004–Mar. 31, 2004	6%	65	619
Apr. 1, 2004–Jun. 30, 2004	7%	67	621
Jul. 1, 2004–Sep. 30, 2004	6%	65	619
Oct. 1, 2004–Dec. 31, 2004	7%	67	621
Jan. 1, 2005–Mar. 31, 2005	7%	19	573
Apr. 1, 2005–Jun. 30, 2005	8%	21	575
Jul. 1, 2005–Sep. 30, 2005	8%	21	575
Oct. 1, 2005–Dec. 31, 2005	9%	23	577
Jan. 1, 2006–Mar. 31, 2006	9%	23	577
Apr. 1, 2006–Jun. 30, 2006	9%	23	577
Jul. 1, 2006–Sep. 30, 2006	10%	25	579
Oct. 1, 2006–Dec. 31, 2006	10%	25	579
Jan. 1, 2007–Mar. 31, 2007	10%	25	579
Apr. 1, 2007–Jun. 30, 2007	10%	25	579
Jul. 1, 2007–Sep. 30, 2007	10%	25	579
Oct. 1, 2007–Dec. 31, 2007	10%	25	579
Jan. 1, 2008–Mar. 31, 2008	9%	71	625
Apr. 1, 2008–Jun. 30, 2008	8%	69	623
Jul. 1, 2008–Sep. 30, 2008	7%	67	621
Oct. 1, 2008–Dec. 31, 2008	8%	69	623
Jan. 1, 2009–Mar. 31, 2009	7%	19	573
Apr. 1, 2009–Jun. 30, 2009	6%	17	571
Jul. 1, 2009–Sep. 30, 2009	6%	17	571
Oct. 1, 2009–Dec. 31, 2009	6%	17	571
Jan. 1, 2010–Mar. 31, 2010	6%	17	571
Apr. 1, 2010–Jun. 30, 2010	6%	17	571
Jul. 1, 2010–Sep. 30, 2010	6%	17	571
Oct. 1, 2010–Dec. 31, 2010	6%	17	571
Jan. 1, 2011–Mar. 31, 2011	5%	15	569
Apr. 1, 2011–Jun. 30, 2011	6%	17	571
Jul. 1, 2011–Sep. 30, 2011	6%	17	571
Oct. 1, 2011–Dec. 31, 2011	5%	15	569
Jan. 1, 2012–Mar. 31, 2012	5%	63	617
Apr. 1, 2012–Jun. 30, 2012	5%	63	617
Jul. 1, 2012–Sep. 30, 2012	5%	63	617
Oct. 1, 2012–Dec. 31, 2012	5%	63	617
Jan. 1, 2013–Mar. 31, 2013	5%	15	569

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

	RATE	1995–1 C.B. TABLE	PG
Apr. 1, 2013–Jun. 30, 2013	5%	15	569
Jul. 1, 2013–Sep. 30, 2013	5%	15	569
Oct. 1, 2013–Dec. 31, 2013	5%	15	569
Jan. 1, 2014–Mar. 31, 2014	5%	15	569
Apr. 1, 2014–Jun. 30, 2014	5%	15	569
Jul. 1, 2014–Sep. 30, 2014	5%	15	569
Oct. 1, 2014–Dec. 31, 2014	5%	15	569
Jan. 1, 2015–Mar. 31, 2015	5%	15	569
Apr. 1, 2015–Jun. 30, 2015	5%	15	569
Jul. 1, 2015–Sep. 30, 2015	5%	15	569
Oct. 1, 2015–Dec. 31, 2015	5%	15	569
Jan. 1, 2016–Mar. 31, 2016	5%	63	617
Apr. 1, 2016–Jun. 30, 2016	6%	65	619
Jul. 1, 2016–Sep. 30, 2016	6%	65	619
Oct. 1, 2016–Dec. 31, 2016	6%	65	619
Jan. 1, 2017–Mar. 31, 2017	6%	17	571
Apr. 1, 2017–Jun. 30, 2017	6%	17	571
Jul. 1, 2017–Sep. 30, 2017	6%	17	571
Oct. 1, 2017–Dec. 31, 2017	6%	17	571
Jan. 1, 2018–Mar. 31, 2018	6%	17	571
Apr. 1, 2018–Jun. 30, 2018	7%	19	573
Jul. 1, 2018–Sep. 30, 2018	7%	19	573
Oct. 1, 2018–Dec. 31, 2018	7%	19	573
Jan. 1, 2019–Mar. 31, 2019	8%	21	575
Apr. 1, 2019–Jun. 30, 2019	8%	21	575

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000
FROM JANUARY 1, 1995 – PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1995–Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995–Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995–Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995–Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996–Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996–Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996–Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996–Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997–Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997–Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997–Sep. 30, 1997	6.5%	18	572

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000
FROM JANUARY 1, 1995 – PRESENT

	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 1997–Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998–Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998–Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998–Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998–Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999–Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999–Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999–Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999–Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000–Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000–Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000–Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000–Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001–Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001–Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001–Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001–Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002–Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002–Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002–Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002–Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003–Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003–Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003–Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003–Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004–Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004–Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004–Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004–Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005–Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005–Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005–Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005–Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006–Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006–Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006–Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006–Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007–Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007–Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007–Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007–Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008–Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008–Jun. 30, 2008	3.5%	60	614

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000
FROM JANUARY 1, 1995 – PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jul. 1, 2008–Sep. 30, 2008	2.5%	58	612
Oct. 1, 2008–Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009–Mar. 31, 2009	2.5%	10	564
Apr. 1, 2009–Jun. 30, 2009	1.5%	8	562
Jul. 1, 2009–Sep. 30, 2009	1.5%	8	562
Oct. 1, 2009–Dec. 31, 2009	1.5%	8	562
Jan. 1, 2010–Mar. 31, 2010	1.5%	8	562
Apr. 1, 2010–Jun. 30, 2010	1.5%	8	562
Jul. 1, 2010–Sep. 30, 2010	1.5%	8	562
Oct. 1, 2010–Dec. 31, 2010	1.5%	8	562
Jan. 1, 2011–Mar. 31, 2011	0.5%*		
Apr. 1, 2011–Jun. 30, 2011	1.5%	8	562
Jul. 1, 2011–Sep. 30, 2011	1.5%	8	562
Oct. 1, 2011–Dec. 31, 2011	0.5%*		
Jan. 1, 2012–Mar. 31, 2012	0.5%*		
Apr. 1, 2012–Jun. 30, 2012	0.5%*		
Jul. 1, 2012–Sep. 30, 2012	0.5%*		
Oct. 1, 2012–Dec. 31, 2012	0.5%*		
Jan. 1, 2013–Mar. 31, 2013	0.5%*		
Apr. 1, 2013–Jun. 30, 2013	0.5%*		
Jul. 1, 2013–Sep. 30, 2013	0.5%*		
Oct. 1, 2013–Dec. 31, 2013	0.5%*		
Jan. 1, 2014–Mar. 31, 2014	0.5%*		
Apr. 1, 2014–Jun. 30, 2014	0.5%*		
Jul. 1, 2014–Sep. 30, 2014	0.5%*		
Oct. 1, 2014–Dec. 31, 2014	0.5%*		
Jan. 1, 2015–Mar. 31, 2015	0.5%*		
Apr. 1, 2015–Jun. 30, 2015	0.5%*		
Jul. 1, 2015–Sep. 30, 2015	0.5%*		
Oct. 1, 2015–Dec. 31, 2015	0.5%*		
Jan. 1, 2016–Mar. 31, 2016	0.5%*		
Apr. 1, 2016–Jun. 30, 2016	1.5%	56	610
Jul. 1, 2016–Sep. 30, 2016	1.5%	56	610
Oct. 1, 2016–Dec. 31, 2016	1.5%	56	610
Jan. 1, 2017–Mar. 31, 2017	1.5%	8	562
Apr. 1, 2017–Jun. 30, 2017	1.5%	8	562
Jul. 1, 2017–Sep. 30, 2017	1.5%	8	562
Oct. 1, 2017–Dec. 31, 2017	1.5%	8	562
Jan. 1, 2018–Mar. 31, 2018	1.5%	8	562
Apr. 1, 2018–Jun. 30, 2018	2.5%	10	564
Jul. 1, 2018–Sep. 30, 2018	2.5%	10	564
Oct. 1, 2018–Dec. 31, 2018	2.5%	10	564
Jan. 1, 2019–Mar. 31, 2019	3.5%	12	566

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING $10,000 FROM JANUARY 1, 1995 – PRESENT

	RATE	1995–1 C.B. TABLE	PG
Apr. 1, 2019–Jun. 30, 2019	3.5%	12	566

* The asterisk reflects the interest factors for daily compound interest for annual rates of 0.5 percent published in Appendix A of this Revenue Ruling.

26 CFR 301.6221(a)–1, 301.6222–1, 301.6225–1, 301.6225–2, 301.6225–3, 301.6226–1, 301.6226–2, 301.6226–3, 301.6227–1, 301.6227–2, 301.6227–3, 301.6231–1, etc

T.D. 9844

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Centralized Partnership Audit Regime

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations implementing the centralized partnership audit regime. These final regulations affect partnerships for taxable years beginning after December 31, 2017 and ending after August 12, 2018, as well as partnerships that make the election to apply the centralized partnership audit regime to partnership taxable years beginning on or after November 2, 2015, and before January 1, 2018.

DATES: *Effective date*: These regulations are effective on February 27, 2019.

Applicability Date: For dates of applicability, see §§ 301.6221(a)–1(c); 301. 6222–1(e); 301.6225–1(i); 301.6225–2(g); 301.6225–3(e); 301.6226–1(g); 301.6226–2(h); 301.6226–3(i); 301.6227–1(h); 301.6227–2(e); 301.6227–3(d); 301.6231–1(h); 301.6232–1(f); 301.6233(a)–1(d); 301.6233(b)–1(e); 301.6234–1(f); 301. 6235–1(f); 301.6241–1(b); 301.6241–2(b); 301.6241–3(g); 301.6241–4(b); 301.6241–5(d); 301.6241–6(c).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under sections 6221, 6226, 6235, and 6241, Jennifer M. Black of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–6834; concerning the regulations under sections 6225, 6231, and 6234, Joy E. Gerdy-Zogby of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317-6834; concerning the regulations under sections 6222, 6227, 6232, and 6233, Steven L. Karon of the Office of Associate Chief Counsel (Procedure and Administration), (202) 217-6834; concerning the regulations under section 6225 relating to creditable foreign tax expenditures, Larry R. Pounders, Jr. of the Office of Associate Chief Counsel (International), (202) 317-5465; concerning the regulations relating to chapters 3 and 4 of the Internal Revenue Code (other than section 1446), Subin Seth of the Office of Associate Chief Counsel (International), (202) 317-5003; and concerning the regulations relating to section 1446, Ronald M. Gootzeit of the Office of Associate Chief Counsel (International), (202) 317-4953 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under sections 6221 through 6241 of the Internal Revenue Code (Code) to amend the Procedure and Administration Regulations (26 CFR part 301) to implement the centralized partnership audit regime enacted by section 1101 of the Bipartisan Budget Act of 2015, Public Law 114–74 (BBA), as amended by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, div Q (PATH Act), and sections 201 through 207 of the Tax Technical Corrections Act of 2018, contained in Title II of Division U of the Consolidated Appropriations Act of 2018, Public Law 115–141 (TTCA).

Section 1101(a) of the BBA removed former subchapter C of chapter 63 of the Code effective for partnership taxable years beginning after December 31, 2017. Former subchapter C of chapter 63 of the Code contained the unified partnership audit and litigation rules enacted by the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (TEFRA) that were commonly referred to as the TEFRA partnership procedures or simply TEFRA. Section 1101(b) of the BBA also removed subchapter D of chapter 63 of the Code and part IV of subchapter K of chapter 1 of the Code, rules applicable to electing large partnerships, effective for partnership taxable years beginning after December 31, 2017. Section 1101(c) of the BBA replaced the TEFRA partnership procedures and the rules applicable to electing large partnerships with a centralized partnership audit regime that determines adjustments and, in general, determines, assesses, and collects tax at the partnership level. Section 1101(g) of the BBA set forth the effective dates for these statutory amendments, which are effective generally for returns filed for partnership taxable years beginning after December 31, 2017.

On December 18, 2015, section 1101 of the BBA was amended by the PATH Act. The amendments under the PATH Act are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

On June 14, 2017, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (82 FR 27334) a notice of proposed rulemaking (REG–136118–15) (June 2017 NPRM) proposing rules under section

6221 regarding the scope and election out of the centralized partnership audit regime, section 6222 regarding consistent treatment by partners, section 6223 regarding the partnership representative, section 6225 regarding partnership adjustments made by the IRS and determination of the amount of the partnership's liability (referred to as the imputed underpayment), section 6226 regarding the alternative to payment of the imputed underpayment by the partnership, section 6227 regarding administrative adjustment requests (AARs), and section 6241 regarding definitions and special rules. The Treasury Department and the IRS received written public comments in response to the regulations proposed in the June 2017 NPRM, and a public hearing regarding the proposed regulations was held on September 18, 2017.

On November 30, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 56765) a notice of proposed rulemaking (REG–119337–17) (November 2017 NPRM) proposing rules regarding international provisions under the centralized partnership audit regime, including rules relating to the withholding of tax on foreign persons, the withholding of tax to enforce reporting on certain foreign accounts, and the treatment of creditable foreign tax expenditures of a partnership. No written comments were submitted in response to this NPRM, and no hearing was requested or held.

On December 19, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 60144) a notice of proposed rulemaking (REG–120232–17 and REG–120233–17) (December 2017 NPRM) proposing administrative and procedural rules under the centralized partnership audit regime, including rules addressing assessment and collection, penalties and interest, periods of limitations on making partnership adjustments, and judicial review of partnership adjustments. The regulations proposed in the December 2017 NPRM also provided rules addressing how pass-through partners take into account adjustments under the alternative to payment of the imputed underpayment described in section 6226 and under rules similar to section 6226 when a partnership files an AAR under section 6227. Written comments were received in response to the December 2017 NPRM. However, no hearing was requested or held.

On January 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (82 FR 28398) final regulations under section 6221(b) providing rules for electing out of the centralized partnership audit regime.

On February 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 4868) a notice of proposed rulemaking (REG–118067–17) (February 2018 NPRM) proposing rules for adjusting tax attributes under the centralized partnership audit regime. Written comments were received in response to the February 2018 NPRM. However, no hearing was requested or held.

On March 23, 2018, Congress enacted the TTCA, which made a number of technical corrections to the rules under the centralized partnership audit regime. The amendments under the TTCA are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

On August 9, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 39331) final regulations under section 6223 providing rules relating to partnership representatives and final regulations under § 301.9100–22 providing rules for electing into the centralized partnership audit regime for taxable years beginning on or after November 2, 2015, and before January 1, 2018. Corresponding temporary regulations under § 301.9100–22T were also withdrawn.

On August 17, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 41954) a notice of proposed rulemaking, notice of public hearing, and withdrawal and partial withdrawal of notices of proposed rulemaking (REG–136118–15) (August 2018 NPRM) that withdrew the regulations proposed in the June 2017 NPRM, the November 2017 NPRM, the December 2017 NPRM, and the February 2018 NPRM, and proposed regulations reflecting the technical corrections enacted in the TTCA as well as other changes as discussed in the preamble to the August 2018 NPRM. Written public comments were received in response to the August 2018 NPRM, and a public hearing regarding the proposed regulations was held on October 9, 2018.

In the preambles to the June 2017 NPRM and November 2017 NPRM, comments were requested regarding certain international and tax-exempt aspects of the centralized partnership audit regime. No comments were received in response to these requests, other than a comment regarding fiduciary issues under title I of the Employee Retirement Income Security Act of 1974 (ERISA), which is discussed later in section 3.B.i of the Summary of Comments and Explanation of Revisions. The Treasury Department and IRS will still consider comments on whether any issues related to international rules and tax-exempt partners warrant guidance either under the centralized partnership audit regime provisions or under the relevant provisions of the Code directly related to those areas.

After careful consideration of all written public comments received in response to the June 2017 NPRM, the December 2017 NPRM, and the August 2018 NPRM, as well as statements made during the public hearings for the June 2017 NPRM and the August 2018 NPRM, the portions of the August 2018 NPRM described in this preamble are adopted as amended by this Treasury Decision. Comments received in response to the February 2018 NPRM or that otherwise concern basis and tax attribute rules under § 301.6225–4 or § 301.6226–4 will be addressed in future guidance. For purposes of this preamble, the regulations proposed in the June 2017 NPRM, the November 2017 NPRM, and the December 2017 NPRM are collectively referred to as the "former proposed regulations." The regulations proposed in the August 2018 NPRM are referred to as the "proposed regulations."

Summary of Comments and Explanation of Revisions

Thirty written comments were received in response to the June 2017 NPRM. Five statements were provided at the public hearing held on September 18, 2017. Four written comments were received in response to the December 2017 NPRM. No public hearing was held. Eight written comments were received in response to the August 2018 NPRM, and one statement was provided at the public hearing held on October 9, 2018. All of these comments (both written and provided orally at the public hearings) have been considered, and revisions to the regulations were made in response to the comments. The written comments received are available for public inspection at www.regulations.gov or upon request.

In addition to changes in response to the comments, editorial revisions were also made to correct typographical errors, grammatical mistakes, and erroneous cross-references. Revisions were also made to clarify language in the proposed regulations that was potentially unclear. Unless specifically described in this Summary of Comments and Explanation of Revisions, such revisions were not intended to change the meaning of the language that was revised. All applicability dates were revised to provide that the final regulations will not apply to taxable years that ended before the date the August 2018 NPRM was filed with the **Federal Register.** To the extent comments recommended as a general matter that the regulations take into account the TTCA amendments, those comments were adopted as described in this Summary of Comments and Explanation of Revisions.

1. *Scope of the Centralized Partnership Audit Regime*

Three comments were received regarding the scope of the centralized partnership audit regime. All of the comments concerned former proposed § 301.6221(a)–1, which was issued before the TTCA was enacted. No comments were received on proposed § 301.6221(a)–1 as revised subsequent to the TTCA in the August 2018 NPRM.

Prior to amendment by the TTCA, section 6221(a) provided that any adjustment to items of income, gain, loss, deduction, or credit of a partnership shall be determined at the partnership level. Former proposed § 301.6221(a)–1(b)(1)(i) had defined the phrase "items of income, gain, loss, deduction, or credit" to mean all items and information required to be shown, or reflected, on a return of the partnership and any information contained in the partnership's books and records for the taxable year. One comment stated the definition under former proposed § 301.6221(a)–1(b)(1)(i) included items on the partnership return or in the partnership's books and records regardless of whether (i) such items or information would affect the income that the partnership reports or (ii) the particular tax characteristics of the separate partners would affect the ultimate tax liability. The comment expressed concern that, by broadly defining the scope of the centralized partnership audit regime, the proposed regulations would expand the number of partnerships and partners that encounter differences between the correct tax they would have paid if they had properly reported, and the amount of the imputed underpayment. No changes to the regulations were made in response to this comment.

The TTCA amended section 6221(a) by replacing the phrase "items of income, gain, deduction, loss or credit of a partnership for a partnership taxable year (and any partner's distributive share thereof)" with the term "partnership-related item." The TTCA added a definition of "partnership-related item" to section 6241(2). The August 2018 NPRM adopted the TTCA amendments to section 6221(a) and 6241 by moving the majority of the regulation text under former proposed § 301.6221(a)–1 to the definition of "partnership-related item" under proposed § 301.6241–6. Because of these changes, the comment is generally no longer applicable to this section of the regulations.

In addition, the TTCA amendments address the comment's first concern that the scope of former proposed § 301.6221(a)–1(b)(1)(i) was overly broad in that it was delineated without regard to whether items or information adjusted at the partnership level affect the income of the partnership. Section 6241(2)(B) broadly defines a partnership-related item as any item or amount with respect to the partnership which is relevant in determining the tax liability of any person under chapter 1 of the Code and any partner's distributive share thereof. Section 6241(2)(B). Nothing within that definition limits the term partnership-related item to income reported by the partnership. To the contrary, partnership-related items are any items with respect to the partnership that are relevant to determining any person's chapter 1 tax, which could include partnership expenses, credits generated by partnership activity, assets and liabilities of the partnership, and any other items concerning the partnership that are relevant to someone's chapter 1 tax, irrespective of the impact such items have on the partnership's income.

Furthermore, the core feature of the centralized partnership audit regime is to provide a centralized method of examining items of a partnership. Adjusting items on a partnership's return or in the partnership's books and records, regardless of their effect on partnership income, in a centralized partnership proceeding at the partnership level is not only consistent with this centralized approach, but it also results in efficiencies because one proceeding can be conducted that will bind all partners and the partnership. See section 6223(b). Nothing in the statute requires only items that affect the partnership's income, as reported on the partnership's return, to be adjusted at the partnership level.

Regarding the comment's second concern that an imputed underpayment is determined without regard to partners' tax characteristics and that the imputed underpayment amount differs from the amount of tax the partners would have paid had the items been reported correctly, those concerns are addressed in section 3.A. of this Summary of Comments and Explanation of Revisions.

Former proposed § 301.6221(a)–1(b)(1)(i) provided as an example of an "item of income, gain, loss, deduction, or credit" any items related to transactions between a partnership and any person including disguised sales, guaranteed payments, section 704(c) allocations, and transactions to which section 707 applies. Former proposed § 301.6221(a)–1(b)(1)(i)(H). One comment suggested that this provision inappropriately included partner items such as a disguised fee under section 707(a)(2)(A) and the gain or loss a partner may realize from a disguised sale under section 707(a)(2)(B). The comment recommended revising the regulations to refer to "items *of a partnership* related to . . . transactions to which section 707 applies." Similarly, another comment expressed concern about situations where a partner was not acting in the partner's capacity as a partner, but rather as a counterparty to a transaction with the partnership. The comment suggested that the regulations clarify that a final determination of a transaction between a partnership and a partner following an examination of the partnership is not binding on any third person, including a partner not acting in its capacity as a partner and who was not a party to the examination.

These comments are addressed by the final regulations under § 301.6241–1(a)(6) regarding the definition of partnership-related item. Proposed § 301.6241–6(b)(4) and (5) defined the phrase "item or amount with respect to the partnership" to include an item or amount that relates to a transaction with the partnership by a partner acting in its capacity as a partner or by an indirect partner acting in its capacity as an indirect partner as well as an item or amount relating to a transaction that is described in section 707(a)(2), 707(b), or 707(c). Accordingly, under the proposed regulations if an item or amount related to a transaction that is described in section 707(a)(2), 707(b), or 707(c) and was relevant in determining chapter 1 tax, that item was a partnership-related item and must be determined at the partnership level.

As described more fully in section 1.B., the final regulations clarify that items or amounts relating to transactions of the partnership are items or amounts with respect to the partnership only if those items or amounts are shown, or required to be shown, on the partnership return or are required to be maintained in the partnership's books and records. The final regulations further clarify that items or amounts shown, or required to be shown, on a return of a person other than the partnership (or in that person's books and records) that result after application of the Code to a partnership-related item and that take into account the facts and circumstances specific to that person are not partnership-related items and, therefore, are not determined at the partnership level under the centralized partnership audit regime.

The changes in the final regulations to the definition of partnership-related item address the concerns raised by the comment. First, § 301.6241–1(a)(6) provides that only items or amounts reflected, or required to be reflected on the partnership's return or in its books and records are with respect to the partnership. If such items are relevant to determining chapter 1 tax such items are partnership-related items. This rule applies equally to items or amounts relating to any transaction with, liability of, or basis in the partnership. Second, § 301.6241–1(a)(6) further provides that items reflected, or required to be reflected on the return of a person other than the partnership or in that person's books and records that result after application of the Code to a partnership-related item are not with respect to a partnership and, thus, not partnership-related items. Accordingly, only items of the partnership, as suggested by the comment, are partnership-related items under § 301.6241–1(a)(6).

Proposed § 301.6221(a)–1(a) provided that any consideration necessary to make a determination at the partnership level under the centralized partnership audit regime, including the period of limitations on making partnership adjustments under section 6235 or facts necessary to calculate an imputed underpayment under section 6225 were determined at the partnership level. The final regulations under § 301.6221(a)–1(b) retain this concept, but with revised language. The final regulations provide that any legal or factual determinations underlying any adjustment or determination made under the centralized partnership audit regime are also determined at the partnership level under the centralized partnership audit regime. For instance, such determinations include the period of limitations on making adjustments under the centralized partnership audit regime and any determinations necessary to calculate the imputed underpayment or any modification of the imputed underpayment under section 6225.

After consideration, the Treasury Department and the IRS have concluded that the phrase "legal and factual determinations underlying an adjustment or determination" instead of the phrase "any consideration necessary to make a determination at the partnership level" more clearly and accurately reflects the rule that facts and legal conclusions that underlie adjustments to partnership-related items, tax, and penalties made at the partnership level are also determined at the partnership level. The revised language more clearly describes the rule and provides taxpayers with more definitive guidance regarding the items determined at the partnership level. Additionally, this language is consistent with language used in proposed § 301.6241–6(b)(8), which was removed as described in section 2 of this Summary of Comments and Explanation of Revisions.

Lastly, the final regulations remove the list of cross-references from the end of proposed § 301.6221(a)–1(a). The TTCA amended section 6221(a) to provide that adjustments to partnership-related items are determined at the partnership level "except to the extent otherwise provided in" subchapter C of chapter 63. Because the statutory language is clear that there are exceptions within subchapter C of chapter 63 to the general rule under section 6221(a) and § 301.6221(a)–1, the list of cross-references from proposed § 301.6221(a)–1(a) was no longer necessary.

A. *Penalty defenses*

Five comments were received with respect to former proposed § 301.6221(a)–1(c), which provided that any defense to any penalty, addition to tax, or additional amount must be raised by the partnership in a partnership-level proceeding under the centralized partnership audit regime, regardless of whether the defense relates to facts and circumstances relating to a person other than the partnership. Once the adjustments determined in the partnership-level proceeding became final, no defense to any penalty determined could be raised or taken into account. Former proposed § 301.6221(a)–1(c).

Several comments stated that the rule under former proposed § 301.6221(a)–1(c) was inequitable to partners because, among other reasons, partners had no control over whether the partnership representative would raise a partner-specific defense, especially in the case of indirect partners who are less directly connected to the partnership representative. Some comments recommended the regulations clarify how partner-level defenses would be raised in the partnership-level proceeding and how decisions regarding those penalty defenses would be communicated to partners. Other comments suggested that partners should be able to raise their own partner-level defenses. In response to these comments, former proposed § 301.6221(a)–1(c) was removed from the proposed regulations in the December 2017 NPRM. See section 3 of the preamble to the December 2017 NPRM. The December 2017 NRPM also proposed regulations under sections 6225 and 6226 (former proposed §§ 301.6225–2(d)(2)(viii) and 301.6226–3(i)) which allowed partners to raise their own partner-level defenses at the time partners took into account the partnership adjustments determined at the partnership level (either through the modification process or as part of the election under section 6226). For further discussion of the rules regarding partner-level defenses under sections 6225 and 6226, see sections 3.D. and 4.C.ii.I. of this preamble. See also section 8.A. of this preamble regarding section 6233(a).

B. *Partnership-related item*

Proposed § 301.6241–6(a) defined the term "partnership-related item" as any item or amount with respect to the partnership which is relevant to determining the tax liability of any person under chapter 1 and any partner's distributive share of any such item or amount. Proposed § 301.6241–6(b) provided that an item or amount is with respect to the partnership without regard to whether the item or amount appeared on the partnership return if the item or amount was described in one of eight categories. Two categories described items or amounts that are shown or reflected, or required to be shown or reflected, on a return of the partnership under section 6031 or are in the partnership's books and records. The other categories described items or amounts relating to certain transactions with the partnership, items or amounts relating to liabilities of the partnership provided the item or amount was reported by a partner, and items or amounts relating to basis in the partnership. Imputed underpayments and any legal or factual determinations necessary to make an adjustment to items or amounts described in the other categories were also defined as items or amounts with respect to the partnership. Proposed § 301.6241–6(b)(1) through (8).

After careful consideration, the Treasury Department and the IRS have revised the definition of "item or amount with respect to the partnership" First, the final regulations remove the language "without regard to whether or not such item or amount appears on the partnership's return" from proposed § 301.6241–6(b). That phrase derived from the parenthetical in section 6241(2)(B)(i) that follows "item or amount with respect to the partnership." The Treasury Department and the IRS have determined that the parenthetical language describes items or amounts that appear on the partnership return, items or amounts that were required to appear on the return but actually did not, and items or amounts that factor into the determination of items or amounts that do appear on the partnership return. The Treasury Department and the IRS have concluded that this parenthetical does not extend the concept of "with respect to the partnership" to items or amounts that are reported by third parties and that are otherwise not defined as partnership-related items in these final regulations. See § 301.6241–1(a)(6)(vi)(A) and (B).

Second, the final regulations replace the list of eight categories of items or amounts that were with respect to the partnership with a single, streamlined paragraph, § 301.6241–1(a)(6)(iii) that includes all the items and amounts from the prior list, except as described in this section of this preamble. Third, the definition of partnership-related item was moved from proposed § 301.6241–6 and placed under the definition of "partnership adjustment" in § 301.6241–1(a)(6) to more closely track the statutory structure of section 6241(2).

The final regulations under § 301.6241–1(a)(6)(iii) maintain the rule from the proposed regulations that items or amounts shown or reflected, or required to be shown or reflected, on the return of the partnership are items or amounts with respect to the partnership. The final regulations also clarify that items or amounts in the partnership's book or records are items or amounts with respect to the partnership if those items or amounts are "required to be maintained" in the partnership's books and records. The phrase "required to be maintained" is added to account for items that may be maintained in the partnership's books and records on a voluntary basis. For example, a partnership may choose to maintain the outside basis of each of its partners in its books and records, even though the Code does not require this information be maintained by the partnership. The rule make clears that the voluntary recording of an item in the partnership's books is not determinative of the meaning of the phrase "item or amount with respect to the partnership." A partnership cannot convert an item or amount that is not with respect to the partnership into an item or amount that is with respect to the partnership merely by including that item or amount in the partnership's books and records. This rule provides consistency among partnerships and more certainty regarding what items in the books and records of a partnership constitute items or amounts with respect to the partnership.

The final regulations do not retain the separate categories of items relating to transactions with, liabilities of, and basis in the partnership. Instead, the final regulations adopt a streamlined approach and provide that those items are only with respect to the partnership if those items are reflected, or required to be reflected, on the partnership's return or required to be maintained in its books and records. The separate treatment under the proposed regulations for these types of items and amounts was duplicative. Items or amounts relating to transactions with, liabilities of, and basis in the partnership are items or amounts shown or reflected, or would be required to be shown or reflected, on the partnership return or required to be maintained in the partnership's books and records. Accordingly, describing separate categories for such items was unnecessary and potentially confusing.

Under § 301.6241–1(a)(6)(iii), an item or amount is with respect to the partnership only if the item or amount is shown or reflected, or required to be shown or reflected, on the partnership return or required to be maintained in the partnership's books and records. Consistent with that interpretation, the final regulations provide an item or amount relating to transactions with, liabilities of, and basis in the partnership is with respect to the partnership only if the item or amount is reported, or required to be reported, on the partnership return or is required to be maintained in the partnership's books and records.

The term partnership-related item includes a partner's distributive share of items or amounts that are with respect to the partnership which are relevant in determining the chapter 1 tax of any person. Section 6241(2)(B)(ii). In taking into account the partner's distributive share of partnership-related items, a partner must apply the provisions of the Code to each partnership-related item to compute the partner's ultimate tax liability. The application of the Code to the partner's share of partnership-related items requires taking into account facts and circumstances that are unique to a particular partner. Generally speaking, those facts and circumstances are known only by the partner, are not known by the partnership, and are based on information only within the partner's control and outside of the partnership's control.

In an examination of items on a partner's return, the IRS generally needs information pertaining to the partner's specific facts and circumstances to determine the correctness of the items. The partner whose items are at issue is normally the best source for that type of information. While a partnership may possess some information about a particular partner's facts and circumstances, obtaining information from the partnership is generally not as efficient as obtaining information from the partner. Obtaining such information from the partner also preserves the privacy interests of the partner. Therefore, from both a taxpayer and tax administration standpoint, an examination of items for which application of the Code depends on a partner's particular facts and circumstances is, in general, best performed at the partner level, rather than the partnership level.

Under the TEFRA procedures, these types of items were considered affected items and adjustments to those items were computational adjustments. The centralized partnership audit regime is intended to have a scope sufficient to address those items that would have been considered partnership items, affected items, and computational adjustments under TEFRA, including the regulations. Joint Comm. on Taxation, JCX–6–18, Technical Explanation of the Revenue Provisions of the House Amendment to the Senate Amendment to H.R. 1625 (Rules Committee Print 115–66), 37 (2018) (JCX–6–18). One way to achieve a sufficiently broad scope is to attempt to define the term "partnership-related item" to include those items that would have been partnership items, affected items, and computational adjustments under TEFRA. For the following reasons, however, this approach was not adopted.

The centralized partnership audit regime is a fundamentally distinct system from TEFRA. While under both sets of rules adjustments are made at the partnership level and those adjustments are binding on partners, the framework for assessing and collecting tax resulting from those adjustments is significantly different. Under TEFRA, tax attributable to partnership items determined at the partnership level and tax attributable to affected items was assessed against the partners of the partnership through computational adjustments made by the IRS with respect to the partner. Computational adjustments were made either by mailing a notice of deficiency to the partner if factual determinations were necessary at the partner level or by directly assessing tax against the partner. The tax was assessed with respect to the year that was audited by the IRS, and assessments were required to be made within one year of the completion of the partnership-level proceeding.

Under the centralized partnership audit regime, adjustments to partnership-related items are similarly determined at the partnership level. In stark contrast to the TEFRA procedures, however, the tax attributable to those adjustments is also assessed and collected at the partnership level in the form of an imputed underpayment determined pursuant to section 6225. An imputed underpayment is assessed as if it were a tax imposed for the adjustment year, generally the year in which the adjustments are finally determined, instead of the year that was subject to examination. Section 6225(d). The partnership, not the partners, is liable for the imputed underpayment. A partnership may elect the alternative to payment of the imputed underpayment under section 6226 and "push out" the adjustments determined at the partnership level, in which case the tax attributable to the adjustments is assessed and collected from the partnership's partners. Unlike the TEFRA procedures, however, under the push out process, assessment and collection is initiated by the partner, rather than by the IRS, by the partner taking into account the partnership adjustments and self-reporting any tax due on the partner's next filed return, alleviating both the administrative and timing issues that arose in TEFRA. See section 2.A of the preamble to the June 2017 NPRM.

When calculating an imputed underpayment based on adjustments determined at the partnership level, taxpayer favorable adjustments are generally disregarded and the highest rate of tax is applied. This formula may produce an amount that is larger than the cumulative amount of tax the partners would have paid had the partners taken the adjustments into account separately, but it also relieves the IRS of the obligation to account for specific partner facts and circumstances when initially determining the imputed underpayment amount. During the modification phase, a partnership may, at its option, request that the imputed underpayment be modified to take into account partner tax attributes and facts and circumstances. See section 3.B. for further discussion.

When taking into account adjustments under section 6226, a partner determines the increase or decrease in tax that would have occurred if the adjustments were taken into account for the partner's tax year correlating to the year that was audited. For intervening years, any year between the audited year and the current year, the partner must determine the effect on tax attributes of the adjustments and the resulting increase or decrease that would have occurred for those years as well. The partner then adjusts her tax for the current year by the aggregate tax that would have resulted had the adjustments been properly taken into account. Under TEFRA, it was the IRS's burden to determine tax at the partner level. The centralized partnership audit regime, under section 6226, shifts that burden from the IRS to the partner. As a result, it is neither necessary nor efficient for the IRS to determine at the partnership level the facts and circumstances specific to a partner in order for that partner to determine the proper amount of tax in the case of a push out.

The rules for calculating an imputed underpayment under section 6225 and the computation rules under section 6226 are sufficiently broad to ensure that the tax attributable to items that would have been partnership items, affected items, and computational adjustments under the TEFRA is collected under the centralized partnership audit regime. When the partnership pays an imputed underpayment, the application of limitations and restrictions is assumed and favorable adjustments are disregarded unless a partnership demonstrates that partner tax attributes should override those assumptions. In this way, the imputed underpayment determination, including any modifications, sufficiently accounts for those types of items that would have been affected items or computational adjustments under TEFRA. Similarly, in the case of an election under section 6226, the re-computation process necessarily involves the application of items that would have been affected items or computational adjustments.

Because both the imputed underpayment rules and the section 6226 rules sufficiently address items that would have been partnership items, affected items, and computational adjustments, it is both unnecessary and over-inclusive to define partnership-related item to encompass all of those items. Accordingly, the final regulations clarify that the term partnership-related item does not include items or amounts that would have been TEFRA affected items or computational adjustments. The final regulations do this by defining "with respect to the partnership" to exclude items or amounts shown, or required to be shown, on a return of a person other than the partnership (or in that person's books and records) that result after application of the Code to a partnership-related item and that take into account the facts and circumstances specific to that person. Because these items and amounts are not with respect to the partnership, they are not partnership-related items the IRS must adjust at the partnership level. Two examples were added to the final regulations under § 301.6241–1(a)(6)(vi) to illustrate this rule.

The definition of "with respect to the partnership," and by extension partnership-related item, under the final regulations preserves the centralized nature of the proceeding with respect to the partnership. During the partnership level proceeding under the centralized partnership audit regime, the IRS adjusts items that are germane to the partnership as an entity – that is, items reported by the partnership on its return or items in its books and records generally used for purposes of completing the return. The partnership has access to this information, and it is therefore, in general, most efficient to obtain this information from the partnership in the partnership level proceeding.

This rule also protects the tax and privacy interest of partners. Under section 6223, partners are bound by actions taken by the partnership in the partnership proceeding and by any final decision in the partnership proceeding. Unlike under TEFRA, individual partners do not have a right to participate in the partnership level administrative or judicial proceeding. If items based on the application of the Code to a particular partner based on that partner's facts and circumstances were items required to be determined at the partnership level, the partner may be unable to dispute adjustments to those items. And even if the partner were able to dispute adjustments to those items, the partner would need to divulge private information in a proceeding in which the partnership was the party, not the partner itself.

In addition, a rule that would require that such items and amounts be determined at the partnership level raises significant administrative concerns for the IRS. In general, the partnership would in most cases lack the facts necessary to determine items or amounts that depend on the facts and circumstances of the partners. By necessity, the IRS would be required to involve the partners in the examination to the extent the partner's items and amounts were at issue. Requiring the IRS to involve potentially the many partners in the entity level examination of the partnership would undermine the efficiencies of the centralized partnership audit regime's concept of the partnership representative and the binding nature of the partnership representative on the outcome of the entity level examination. Further, if the IRS did not examine all of the various items or amounts on the partners' returns during the partnership level proceeding, the IRS would, for each of the partners' items and amount that were also partnership-related items, be precluded from adjusting those items at the partner level outside of the centralized partnership audit regime. This would lead to an unnecessary expansion of partnership-level proceedings to encompass what could more simply and efficiently be resolved at the partner level for one or a small group of partners.

i. Comments Concerning Partnership-related Item

One comment recommended that all partners should be audited as a group, but only about their financial involvement within the scope of the partnership. According to the comment, outside interests and income should not be determined at the partnership level. Although it is not entirely clear what the comment includes in the phrases "financial involvement within the scope of the partnership" and "outside interests and income", the Treasury Department and the IRS understand this comment to be a request to limit the scope of the items that are "with respect to the partnership" for purposes of this section. Another comment suggested that the scope of the term "partnership-related item" should not be unreasonably broad, particularly with respect to partner-level items where the underlying issue is primarily of interest to the partner and not the partnership. The comment expressed concern that the partnership could have little interest in disputing a proposed adjustment that would have little impact to the partnership but could have a dramatic effect on a particular partner.

These comments were adopted as reflected in the changes to the definition of "with respect to the partnership" described in this section of this preamble. Under the final regulations, outside interests and income and partner-level items are not "with respect to the partnership" to the extent those are not items or amounts reflected, or required to be reflected, on the partnership return or required to be maintained in the partnership's books and records. In addition, the items or amounts that are "with respect to the partnership" as defined in § 301.6241–1(a)(6)(iii) are generally items concerning the partners' financial involvement within the scope of the partnership. Accordingly, adjustments to items concerning the partners' financial involvement within the scope of the partnership would generally be determined at the partnership level, and adjustments to items involving outside interests and income or partner-level items that result after application of the Code to a partnership-related item and that take into account facts and circumstances specific to the partner, to the extent provided for in this section, are not determined at the partnership level under the centralized partnership audit regime.

In addition to the revisions described earlier in this section of this preamble, the term imputed underpayment was moved from the definition of "item or amount is with respect to the partnership" to the definition of partnership-related item under § 301.6241–1(a)(6)(ii). This change clarifies that an imputed underpayment is always a partnership-related item. First, an imputed underpayment is a creation of the centralized partnership audit regime and can only arise under the centralized partnership audit regime. See sections 6225, 6226, and 6227. Second, the statute expressly defines an imputed underpayment as an item or amount that is with respect to the partnership. Section 6241(2)(B)(i). Third, an imputed underpayment is relevant in determining the liability of any person under chapter 1, as defined in § 301.6241–1(a)(6)(iv), because payment of the imputed underpayment by the partnership relieves the partners of any chapter 1 liability attributable to the reviewed year partnership adjustments.

2. *Partner's Return Must Be Consistent with Partnership Return*

Five comments were received concerning section 6222, regarding the requirement that a partner's return be consistent with the partnership return. The comments covered the following topics: inconsistent treatment in the case of an amended return, an administrative adjustment request, or where no partnership return is filed; the form and method for identifying inconsistent treatment; proceedings to adjust identified, inconsistently reported items; and the election regarding consistent treatment with a schedule furnished to the partner by the partnership. In addition to responding to these comments, this section of the preamble describes changes to the language of § 301.6222–1(a)(2) regarding partners that are partnerships with an election in effect under section 6221(b).

A. *Inconsistent treatment on an amended return and definition of partner's return for purposes of § 301.6222–1*

One comment recommended that the regulations clarify that a partner may file an amended return in order to take a position inconsistent with the filed partnership return as long as such amended return includes a statement identifying the inconsistent treatment. Under section 6222(a), a partner shall, on the partner's return, treat each partnership-related item in a manner that is consistent with the treatment of such item on the partnership return. Proposed § 301.6222–1(a) provided that the treatment of partnership-related items on a partner's return must be consistent with the treatment of such items on the partnership return in all respects, including the amount, timing, and characterization of such items. The term "partner's return" is not defined in either section 6222(a) or proposed § 301.6222–1(a).

Section 6222(a) and § 301.6222–1(a) are designed to ensure consistent treatment of partnership-related items on partners' returns and the partnership return filed with the IRS, except for cases where the partner notifies the IRS of the inconsistency. The requirement to be consistent with the partnership return extends to each return filed by the partner that reflects, or is required to reflect, partnership-related items. This includes both original and amended returns. Any other application of this requirement would render the requirement of consistency meaningless. For example, a partner could file a return on April 15 taking a consistent position, only to turn around on April 16 and file an amended return taking an inconsistent position.

To clarify that the consistency requirement under section 6222(a) and proposed § 301.6222–1(a) applies to each return of the partner, the final regulations provide that the term "partner's return" for purposes of § 301.6222–1 includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed by the partner with respect to any tax imposed by the Internal Revenue Code. Accordingly, pursuant to § 301.6222–1(a), a partner on either an original or an amended return must treat partnership-related items consistently with how those items were treated on the partnership return filed with the IRS.

The clarification of the term "partner's return" also addresses the comment's suggestion that the regulations permit inconsistent treatment on an amended return provided the IRS is notified of that inconsistent treatment. Under § 301.6222–1(c)(1), the requirement that a partner treat a partnership-related item consistently with the partnership's treatment of that item, and the effect of inconsistent treatment, do not apply to partnership-related items identified as inconsistent (or that may be inconsistent) in a statement attached to the partner's return on which the partnership-related item is treated inconsistently. As clarified in these final regulations, the term partner's return for purposes of § 301.6222–1 includes any amendment to the partner's original return. Accordingly, so long as a partner notifies the IRS of an inconsistent treatment, in the form and manner prescribed by the IRS, by attaching a statement to the partner's return – including an amended return – on which the partnership-related item is treated inconsistently, the consistency requirement under § 301.6222–1(a), and the effect of inconsistent treatment under § 301.6222–1(b), do not apply to that partnership-related item.

i. Limitations on Filing Amended Returns Reporting Inconsistent Positions

When a partner on an amended return treats a partnership-related item inconsistently with how the item was treated on the partnership return, the partner is making a request for an administrative adjustment of that partnership-related item. Accordingly, the rule under proposed

§ 301.6227–1(a) that provided a partner may not request an administrative adjustment of a partnership-related item was revised to account for situations in which on an amended return a partner treats a partnership-related item inconsistently with the partnership return pursuant to § 301.6222–1(c)(1).

Section 6227(c) provides that in no event may a partnership file an AAR after a notice of an administrative proceeding with respect to the taxable year is mailed under section 6231. Consistent with section 6227(c), proposed § 301.6227–1(b) provided that no AAR may be filed after a NAP has been mailed by the IRS, except as provided in § 301.6231–1(f) (regarding withdrawal of a NAP). To give effect to this rule in the context of inconsistent treatment, the final regulations under § 301.6222–1(c)(5) provide that a partner may not notify the IRS that the partner is treating an item inconsistently with the partnership return for a taxable year after a NAP with respect to such partnership taxable year has been mailed by the IRS under section 6231. This rule clarifies that once the IRS initiates an administrative proceeding with respect to a partnership taxable year, any adjustment to a partnership-related item for that year must be determined exclusively within that partnership-level proceeding in accordance with section 6221(a). Neither the partnership, through filing an AAR, nor a partner, by taking an inconsistent position, may adjust a partnership–related item outside of that proceeding. Any actions taken by the partnership and any final decision in the proceeding are binding on the partnership and all its partners. Section 6223(b).

B. *Inconsistent treatment in the case of an administrative adjustment request*

Proposed § 301.6222–1(c)(2) provided that the notification procedures under § 301.6222–1(c) do not apply to a partnership-related item the treatment of which is binding on the partner because of actions taken by the partnership, or because of any final decision in a proceeding with respect to the partnership, under the centralized partnership audit regime. Accordingly, under proposed § 301.6222–1(c)(2), the provisions of § 301.6222–1(c) did not apply with respect to the partner's treatment of a partnership-related item reflected on an AAR. This meant that a partner could not treat an item inconsistently with how such item was treated on an AAR. One comment recommended that the regulations under § 301.6222–1(c)(2) be revised to permit a partner to notify the IRS of an inconsistent position taken with respect to an item reported on an AAR. This comment was adopted.

Under section 6223(b), all partners are bound by actions taken by the partnership and by any final decision with respect to the partnership under the centralized partnership audit regime. In the case of an AAR, section 6223(b) binds each partner to the partnership's making of the request itself and the mechanism by which the adjustments requested are taken into account, including any election by the partnership to have the partners take into account the adjustments. Accordingly, if the partnership takes into account the adjustments by paying an imputed underpayment, the partners must follow the rules under section 6225. If there is no imputed underpayment or if the partnership elects to have the partners take into account the adjustments, the partners must follow the procedures under § 301.6227–3.

When taking into account AAR adjustments under § 301.6227–3, partners must adhere to the consistency requirements under section 6222(a). See § 301.6222–1(a)(4) (providing consistency requirement applies to the treatment of a partnership-related item on an AAR). Nothing in sections 6222, 6223(b), or 6227, however, precludes a partner from notifying the IRS the partner is taking an adjustment into account inconsistently with how the adjusted item was treated in an AAR. While section 6227 imposes certain requirements with respect to AARs, none of those requirements contradict section 6222(c)'s exception to the consistency requirement. Accordingly, the final regulations under § 301.6222–1(c)(2) remove the language stating that the provisions of § 301.6222–1(c)(1) do not apply with respect to a partner's treatment of a partnership-related item reflected on an AAR. In addition, the final regulations under § 301.6227–1 remove the rule under proposed § 301.6227–1(f) regarding the binding nature of an AAR. As a result of these changes, a partner may notify the IRS it is treating an AAR-adjusted item inconsistently in accordance with the provisions of § 301.6222–1(c).

The final regulations under § 301.6222–1(c)(2) maintain the language stating that the provisions of § 301.6222–1(c)(1) do not apply to a partner's treatment of an item reflected on a statement under section 6226 filed by the partnership with the IRS. A cross-reference to § 301.6226–1(e) was also added. In addition, the final regulations clarify that the provisions of § 301.6222–1(c)(1) do not apply to any item the treatment of which is binding on the partner because of an action taken by the partnership or because of a final decision in a proceeding under the centralized partnership audit regime with respect to the partnership. Section 6223(b). Items reflected on a statement under section 6226 filed with the IRS are an example of such items.

C. *Inconsistent treatment when no partnership return is filed*

Proposed § 301.6222–1(a)(3) provided that a partner's treatment of a partnership-related item attributable to a partnership that does not file a return is per se inconsistent, unless the partner files a notice of inconsistent treatment in accordance with proposed § 301.6222–1(c). One comment recommended that the regulations include an example to illustrate the outcome of the application of the rule under proposed § 301.6222–1(a)(3). The comment observed that without a return filed by the partnership, there would not be a return with which to make the partner's return consistent. To illustrate the application of § 301.6222–1(a)(3), Example 7 was added under § 301.6222–1(a)(5).

In light of the comment, the final regulations under § 301.6222–1(b)(1) include the clarification that where a partnership has failed to file a return, any treatment of a partnership-related item on a partner's return may be removed, and the IRS may determine any underpayment of tax resulting from such adjustment.

Lastly, the final regulations eliminate the phrase "unless the partner files a notice of inconsistent treatment in accordance with proposed § 301.6222–1(c)" from proposed § 301.6222–1(a)(3). This change clarifies that a partner's treatment of an item attributable to a partnership that has not filed a return is per se inconsistent, even if the partner notifies the IRS of the inconsistent treatment. The notification under § 301.6222–1(c) turns off the consistency requirement, but it does not change, as a factual matter, that the partner reported inconsistently.

D. *Form and method for identifying inconsistent treatment of a partnership-related item*

Under proposed § 301.6222–1(c)(1), in addition to the requirement that a statement identifying an inconsistent treatment must be attached to the partner's return on which the item is treated inconsistently, the statement must be provided to the IRS according to the forms, instructions, and other guidance prescribed by the IRS. One comment asked about the form and method for providing the IRS with the statement described in proposed § 301.6222–1(c)(1) and suggested specific format guidance in the regulations would assist the public in reporting an inconsistent treatment. This comment was not adopted.

The final regulations maintain the rule that a partner must provide the statement described in § 301.6222–1(c)(1) in accordance with forms, instructions, and other guidance prescribed by the IRS. Prescribing the form and method for notifying the IRS of inconsistent treatment through forms, instructions, and other sub-regulatory guidance allows the IRS the flexibility to update its procedures for identifying an inconsistency as appropriate and necessary without the IRS having to amend the regulations. This flexibility preserves government resources and also expedites the guidance process for taxpayers to be aware of changes in IRS procedures. Accordingly, the final regulations do not provide a specific form or method for identifying inconsistent treatment.

The same comment asked whether a statement identifying inconsistent treatment can only be filed contemporaneously with the partner's tax return. Proposed § 301.6222–1(c) provided that a statement does not identify an inconsistency unless it is attached to the partner's return on which the partnership-related item is treated inconsistently. Because the plain language of proposed § 301.6222–1(c) made clear that the statement identifying inconsistent treatment must be attached to a return, no change was made in response to this comment.

E. *Proceeding to adjust an identified, inconsistently reported item*

If a partner fails to satisfy the requirements of § 301.6222–1(a), the IRS may adjust the inconsistently reported partnership-related item on the partner's return to make it consistent with the treatment of such item on the partnership return, unless the partner provides notice of the inconsistent treatment in accordance with § 301.6222–1(c). See § 301.6222–1(b). Under proposed § 301.6222–1(c)(4)(i), if a partner notifies the IRS of an inconsistent treatment of a partnership-related item in accordance with proposed § 301.6222–1(c)(1) and the IRS disagrees with that inconsistent treatment, the IRS may adjust the identified, inconsistently reported item in a proceeding with respect to the partner. Nothing in proposed § 301.6222–1(c)(4)(i) precluded the IRS, however, from also conducting a proceeding with respect to the partnership.

One comment recommended that § 301.6222–1(c)(4)(i) provide that if the IRS does conduct a proceeding with respect to the partnership to adjust an identified, inconsistently reported item, the IRS may include within that proceeding the partner who provided notice of inconsistent treatment. The comment was concerned that the regulations provided partners who identified inconsistent treatment an automatic right to contest the IRS's adjustment through deficiency proceedings, which would result in more partner-level proceedings and which would be contrary to the intent of the centralized system. According to the comment, the recommended rule would allow the IRS to avoid conducting separate partnership and partner proceedings by allowing the IRS to include notifying partners in the partnership-level proceeding, rather than engaging such partners through deficiency procedures.

Proposed § 301.6222–1(c)(4)(i) provided that the IRS may adjust an identified, inconsistently reported item in a proceeding with respect to the partner. The IRS is not required to make that adjustment. The IRS may instead choose to make the adjustment in a proceeding with respect to the partnership. To the extent the comment was suggesting the IRS must adjust an identified, inconsistently reported item in a proceeding with respect to the partner, the comment was not correct.

If the IRS conducts a proceeding with respect to the partnership, that proceeding will include only the IRS, the partnership, and the partnership representative who is acting on behalf of the partnership. No partner, except a partner that is the partnership representative, or any other person may participate in the partnership proceeding without permission of the IRS. See § 301.6223–2(d)(1). Accordingly, while a partner is not generally included in a proceeding with respect to the partnership under the centralized partnership audit regime, the IRS has the authority under § 301.6223–2(d)(1) to allow any other person, including a partner who notified the IRS of inconsistent treatment, to participate in a partnership-level proceeding. Because that authority exists under § 301.6223–2, a separate rule within § 301.6222–1 to allow notifying partners to be included in a partnership-level proceeding is unnecessary. Therefore, the revision to proposed § 301.6222–1(c)(4) as recommended by the comment was not adopted.

All partners, including partners that have filed a notice of inconsistent treatment, are bound by the actions of the partnership and any final decision in a proceeding with respect to the partnership under the centralized partnership audit regime. See section 6223(b). To clarify the application of this rule in the case of a partnership-level proceeding to adjust an identified, inconsistently reported item, proposed § 301.6222–1(c)(4) was revised to provide that where the IRS conducts a proceeding with respect to the partnership, and there is no proceeding with respect to the partner regarding an identified, inconsistently reported partnership-related item, the partner is bound to actions by the partnership and any final decision in the partnership proceeding.

Another comment suggested that the regulations clarify what happens when the

IRS conducts a proceeding with respect to the partnership under § 301.6222–1(c)(4)(i) and at the conclusion of that proceeding, the IRS accepts the partnership return as filed. The comment suggested the regulations address what procedures apply for collection of an imputed underpayment in that scenario or for collection of tax from the partner that filed inconsistently. This comment was not adopted.

First, because there is no partnership adjustment in the scenario described, there is also no imputed underpayment to collect from the partnership. Additionally, because there is no imputed underpayment, the partnership cannot make a push out election. See section 4.A.iii of this preamble. With respect to collection of tax from the partner, nothing in the regulations prevents the IRS, when it conducts a proceeding with respect to the partnership under § 301.6222–1(c)(4)(i), from also conducting a proceeding with respect to the partner to adjust an identified, inconsistently reported item. Accordingly, no changes were made in response to this comment.

F. *Consistent treatment with schedule furnished to the partner by the partnership*

Under proposed § 301.6222–1(d)(1), a partner is treated as having notified the IRS of treating a partnership-related item inconsistently if the partner demonstrates that the treatment of such item on the partner's return is consistent with the treatment of that item on the statement, schedule, or other form prescribed by the IRS and furnished to the partner by the partnership, and the partner makes a valid election under proposed § 301.6222–1(d)(2). This election must be filed no later than 60 days after the date of such notice. Proposed § 301.6222–1(d)(2). One comment recommended that the regulations provide that this 60-day period may be extended with approval by the IRS. This comment was not adopted.

The IRS may assess and collect any underpayment of tax resulting from an adjustment to conform an inconsistent position in the same manner as if the underpayment were on account of a mathematical or clerical error appearing on the partner's return, except that the procedures under section 6213(b)(2) for requesting abatement of an assessment do not apply. The 60-day period under § 301.6222–1(d)(2) is designed to allow a partner to demonstrate consistency with the information furnished to the partner by the partnership and corresponds to the 60-day period the partner would have had to request abatement if section 6213(b)(2) were applicable. Notably, section 6213(b)(2) does not provide for any extensions of time. Accordingly, the 60-day period under § 301.6222–1(d)(2) affords the partner an opportunity to contest the IRS's conforming adjustment the partner would not have otherwise had.

Additionally, the 60-day period is a reasonable amount of time for the partner to demonstrate consistency with the information it has received from the partnership. At the time the partner is notified by the IRS of the inconsistent treatment, the partner should be in possession of any statements, schedules, or forms furnished to the partner by the partnership. If the partner were permitted to request abatement, the partner would likewise only have 60 days. Furthermore, if the partnership is made aware by the partner that an item was treated incorrectly on the partnership return or the schedules furnished by the partnership, the partnership has the ability to file an AAR with respect to the partnership-related item.

Another comment suggested guidance is needed as to how the election under proposed § 301.6222–1(d)(2) is made. Proposed § 301.6222–1(d)(2)(i) provided that the election must be filed in writing with the IRS office set forth in the notice that notified the partner of the inconsistency. Proposed § 301.6222–1(d)(2)(ii) provided the election must be clearly identified as an election under section 6222(c)(2)(B); signed by the partner making the election; accompanied by a copy of the incorrect statement and IRS notice that notified the partner of the inconsistency; and include any other information required in forms, instructions, or other guidance prescribed by the IRS.

The comment did not suggest what further guidance should be provided in the regulations. Deferring further guidance to forms, instructions, and other sub-regulatory guidance allows the IRS the flexibility to update its procedures as appropriate and necessary without the IRS having to amend the regulations. As discussed earlier in this section of this preamble, this flexibility preserves government resources and also expedites the guidance process for taxpayers to be aware of changes in IRS procedures. Accordingly, proposed § 301.6222–1(d)(2) was not revised in response to this comment.

G. *Effect of Inconsistent Treatment when Partner is a Partnership*

Proposed § 301.6222–1(a)(2) provided that the rules of § 301.6222–1 apply to a partnership-partner regardless of whether the partnership-partner has made an election under section 6221(b) to elect out of the provisions of the centralized partnership audit regime. The final regulations clarify that the rules of § 301.6222–1 apply to all partners including partnership-partners that have elected out of the centralized partnership audit regime and revise the language referring to such partners to better conform to similar references in other regulation sections.

Proposed § 301.6222–1(b)(3) provided a rule regarding the effect of inconsistent treatment where the partner is itself a partnership and also provided a cross-reference to the rules under section 6232(d)(1)(B) and § 301.6232–1(d). To better conform the two sets of rules and to reduce any potential confusion between the provisions, the final regulations eliminate the rule under § 301.6222–1(b)(3) in favor of providing only a cross-reference to the rules under section 6232(d)(1)(B) and § 301.6232–1(d).

3. *Determination of an Imputed Underpayment, Modification of an Imputed Underpayment, and Adjustments that Do Not Result in an Imputed Underpayment*

Twenty comments were received concerning section 6225 and the rules regarding imputed underpayments. This section 3 addresses the comments concerning the determination of an imputed underpayment under proposed § 301.6225–1; modification of an imputed underpayment under proposed § 301.6225–2; and the rules regarding how adjustments that do not result in an imputed underpayment are taken into account in accordance with proposed § 301.6225–3. As discussed in the Background, comments concerning the rules regarding basis and tax attributes under proposed § 301.6225–4 will be addressed in future guidance.

A. *Determination of an imputed underpayment*

Section 6225(b)(1)(B) provides that the determination of any imputed underpayment is made by "applying the highest rate of tax in effect for the reviewed year under section 1 or 11." Consistent with section 6225(b)(1)(B), proposed § 301.6225–1 provided that an imputed underpayment is determined by multiplying the total netted partnership adjustment by the highest rate of federal income tax in effect for the reviewed year under section 1 or 11 and increasing or decreasing that product by certain adjustments to credits and creditable expenditures.

One comment stated that the statute's use of the highest marginal tax rate to calculate the imputed underpayment is unfair to taxpayers who may not be taxed at the highest marginal rate, particularly with respect to adjustments for qualified dividends or capital gains, where a partner is subject to the alternative minimum tax, or where a partner is a tax-exempt entity. To the extent the comment was suggesting that the regulations use a rate different than the rate prescribed in the statute to compute an imputed underpayment, the comment was not adopted. Section 6225(b)(1)(B)'s mandate to "apply the highest rate of tax in effect for the reviewed year under section 1 or 11" is unambiguous, and there is no exception from application of the highest rate for any particular partnership or for any specific type of partner, such as an exception that takes into account unique circumstances of specific partners. Because application of the highest rate is established by statute, the regulations also apply the highest rate of tax to determine an imputed underpayment under section 6225(b).

A partnership and its partners may be able to reduce the rate used in computing an imputed underpayment by requesting modification under section 6225(c). For example, the partnership may request modification under § 301.6225–2(d)(3) with respect to partnership adjustments that are allocable to a tax-exempt entity or modification under § 301.6225–2(d)(4) with respect to adjustments to capital gains or qualified dividends that are attributable to an individual. The partnership may also make a push out election under section 6226, allowing partners to take into account the adjustments and pay tax using their respective marginal tax rates, including taking into account the effect of the alternative minimum tax.

Proposed § 301.6225–1(a)(1) provided that each imputed underpayment determined under § 301.6225–1 is based solely on partnership adjustments with respect to a single taxable year. One comment recommended that the regulations allow adjustments that move income or expense from one year to another to be netted for purposes of computing the imputed underpayment amount. This comment was not adopted.

The comment described an example in which the IRS determines that the partnership should have reported income in year 1 that was originally reported in year 2. The increase in income for year 1 results in an imputed underpayment. The decrease in income in year 2 is an adjustment that does not result in an imputed underpayment pursuant to § 301.6225–1(f)(1)(i), and the partnership and its partners take into account the decrease in income in the adjustment year pursuant to § 301.6225–3. One partner in the comment's example reports income from other sources in the adjustment year; the other partner does not report income from other sources.

Section 6225(b) sets forth the rules for determining an imputed underpayment. The statutory structure of section 6225(b) is premised on the concept that an imputed underpayment is determined with respect to a reviewed year and that adjustments with respect to the reviewed year result in such imputed underpayment or are adjustments that do not result in an imputed underpayment. Section 6225(a). Section 6225(b)(1)(A) expressly provides that "any imputed underpayment *with respect to any reviewed year* shall be determined by the Secretary by appropriately netting all adjustments *with respect to such reviewed year* . . . ." (emphasis added). The statute does not reference adjustments with respect to any year other than the reviewed year. Accordingly, a rule that allows for the netting of adjustments across tax years is not consistent with the statutory language of section 6225(b)(1)(A).

In addition, netting across multiple tax years would not constitute "appropriately netting" within the meaning of section 6225(b)(1)(A). A fundamental federal income tax principle is that each taxable year stands alone. *Commissioner v. Sunnen*, 333 U.S. 591 (1948) ("Income taxes are levied on an annual basis. Each year is the origin of a new liability and of a separate cause of action."). A rule that provides for netting across tax years ignores this fundamental principle. For netting to be appropriate, it must take into account general principles of federal income tax laws as well as the provisions of the Code. Allowing an adjustment from one taxable year to offset or net with an adjustment from another taxable year when determining an imputed underpayment contravenes both the general tax principle that each year stands alone and is not supported by the plain language of section 6225. These principles are particularly significant in the context of partnerships given that partners' interests and the identity of partners can vary from year to year. Because adjustments relating to multiple years may affect items that are allocable to different partners or in different amounts, it would be particularly inappropriate to offset those types of adjustments against each other when determining the imputed underpayment.

Furthermore, a timing adjustment, such as the one described in the comment's example, often has effects that must be reflected in each taxable year's return. Allowing such adjustments to net against each other could inappropriately negate those effects. For instance, an adjustment that shifts a depreciation deduction from one year to another year might have the effect of changing a taxpayer's status from being in a loss posture to being in a gain posture for the year from which the loss is being shifted. Although in some cases a gain in one year might effectively offset a loss in another year, such a result cannot be known without an analysis of each of the partners' specific circumstances. As discussed later in section 3.A.i. of this preamble, requiring the IRS to review each partner's specific circumstance in order to determine the imputed underpayment is the type of inquiry that the centralized partnership audit regime was designed to avoid.

A rule that allows for automatic netting of adjustments across tax years also ignores the limitation in section 6225(b)(4) and would create significant administrative burdens for the IRS. Section 6225(b)(4) provides that if any adjustment would result in a decrease in the amount of the imputed underpayment and could be subject to any additional limitation under the Code if taken into account by any person, such adjustment should not be taken into account in the netting process described in section 6225(b)(1)(A). This provision codifies the presumption that, except as otherwise provided, taxpayer favorable adjustments subject to any possible limitation under the Code if taken into account by any person are disregarded when determining an imputed underpayment. The statute does not require the IRS to determine whether taxpayer favorable adjustments are in fact subject to such limitations. A rule allowing for netting across tax years would, however, require the IRS to make such determinations. This would have the effect of inappropriately expanding the number of tax years and partnership adjustments potentially at issue in the partnership-level proceeding. Not only would that result undermine the limitation under section 6225(b)(4), it would also unnecessarily complicate the partnership examination, creating potential burdens for both the IRS and the partnership.

A rule allowing adjustments to offset across years would also create administrative burdens for both the IRS and for taxpayers because it would require determining the identity of the partners affected by the adjustment. While in some cases a lack of partner turnover may make that determination less burdensome, in other cases where there is a high turnover of partners or where special allocations are involved, the determination becomes more difficult. Establishing a rule that allows netting of adjustments across tax years as a general matter fails to take into account the differing make-up of partnerships and their partners. For instance, assume a case where there is a high turnover of partners, adjustments are determined across multiple reviewed years, and the rules allow netting of those adjustments to form a single imputed underpayment. If the partnership requested to modify that imputed underpayment, it would be unclear which partners would be required to participate in modification and if the partnership made a push out election with respect to the imputed underpayment, it would be unclear which partners would be furnished statements under § 301.6226–2.

Lastly, as a practical matter, the IRS may not examine each relevant partnership taxable year. If an adjustment results in moving a partnership-related item from one taxable year to another, the IRS may examine the other taxable year, but the IRS is not required to. Providing a rule requiring the IRS to take into account other taxable years when netting adjustments would effectively require the IRS to examine all of the partnership's open taxable years, which would result in a significant administrative burden to the IRS and the partnership subject to the administrative proceeding. If netting across tax years was allowed, but the IRS did not examine all relevant years, different partnerships would receive different, and potentially distorted, netting results. For instance, a partnership under examination for multiple taxable years could potentially benefit from netting across those taxable years, but a partnership under examination for only one taxable year would not receive the same benefit. The determination of an imputed underpayment amount for any one year should not be dependent on the number of partnership taxable years the IRS examines.

Accordingly, a rule that allows adjustments to net across taxable years is inconsistent with the statutory language of section 6225(b)(1)(A), contravenes general tax principles, creates administrative burdens for the IRS, and inappropriately affects the timing and netting of certain partnership-related items. Therefore, the final regulations under § 301.6225–1(a)(1) maintain the requirement that an imputed underpayment be based solely on partnership adjustments with respect to a single taxable year.

i. Grouping, Subgrouping, and Netting of Partnership Adjustments

Several comments provided recommendations regarding the grouping, subgrouping, and netting rules under proposed § 301.6225–1(c), (d), and (e). In order to determine an imputed underpayment, each partnership adjustment determined by the IRS is first placed into one of four groupings pursuant to § 301.6225–1(c) according to the type of partnership-related item being adjusted: the reallocation grouping, the credit grouping, the creditable expenditure grouping, or the residual grouping. Adjustments are then subgrouped, if appropriate, and netted to produce the total netted partnership adjustment. Proposed § 301.6225–1(b)(2), (d) and (e).

One comment stated that the grouping and netting procedures are broad, vague, and generally err on the side of maximizing tax revenue resulting from an audit without regard to generally applicable provisions of the Code. The design of section 6225(a) and (b) and the grouping and netting rules under § 301.6225–1 is to create an imputed underpayment amount that is based on the highest rate of tax and that disregards any taxpayer favorable adjustments which would otherwise reduce the imputed underpayment. Given this formula, an imputed underpayment determined under § 301.6225–1 will likely reflect an amount that is larger than the cumulative amount of tax the partners would have paid if the partners took the partnership adjustments into account separately.

This formula is a feature of section 6225(a) and (b). The statute expressly disregards certain adjustments that may be subject to limitations and that would otherwise reduce the imputed underpayment and mandates the application of the highest applicable tax rate. Section 6225(b)(1)(B), (2) and (4). The proposed regulations followed these statutory mandates. By removing the obligation on the IRS to consider partners' facts and circumstances, such as whether adjustments that would otherwise reduce the imputed underpayment might be allowed at the partner level or whether adjustments might be taken into account by partners at a rate lower than the highest rate, section

6225(b) shifts the burden from the IRS during this phase of a partnership examination. Because the imputed underpayment determined at this phase in the examination is not required to reflect the facts and circumstances of the ultimate partners, modifications may be necessary to more closely reflect the proper tax treatment.

After the preliminary determination of the imputed underpayment amount under § 301.6225–1, the burden is shifted to the partnership to utilize the modification procedures under § 301.6225–2 if the partnership so chooses. Modification is designed to allow the partnership and its partners to arrive at an imputed underpayment amount that is closer to the correct amount of tax while maintaining the assessment and collection efficiencies of a centralized audit process. See Joint Comm. on Taxation, JCS–1–16, General Explanations of Tax Legislation Enacted in 2015, 65–66 (2016) (JCS–1–16). As an alternative to modification and paying an imputed underpayment, the partnership can elect under section 6226 to push out the adjustments to its partners. Both modification and the push out election provide the opportunity to establish that the correct amount of tax is collected from the partnership and its partners. Accordingly, the final regulations under § 301.6225–1 were not revised in response to the comment's concern about maximizing revenue.

With respect to the comment's concerns that the grouping and netting procedures are broad and vague and disregard generally applicable tax laws, to the extent those concerns related to the scope of the centralized partnership audit regime and what determinations and adjustments are made at the partnership level, see section 1 of this preamble. To the extent the comment's concerns related to the fact that the regulations do not address every possible grouping and netting scenario, the regulations do so intentionally. The Treasury Department and the IRS have determined it is not reasonable to identify within the regulations all possible permutations of adjustments and partnership facts and circumstances that might affect how an imputed underpayment is calculated. Accordingly, the regulations provide general rules that apply to various scenarios that could arise in the examination process. The general nature of the grouping, subgrouping, and netting rules also allow for the regulations to adapt to future changes to the Code.

Notwithstanding the rules' flexible nature, they are rooted in provisions of the Code and regulations that are generally applicable to partnerships and partners. The regulations require that adjustments be placed into groupings and subgroupings based on how the adjusted items are treated pursuant to the Code, the regulations, forms, instructions, and other guidance and do not generally permit the netting of adjustments that might otherwise be subject to limitations or restrictions under the tax laws. Accordingly, the grouping and netting rules are designed with regard to generally applicable provisions of the Code. For further discussion of the comment's concerns regarding the grouping and netting rules and the interaction with generally applicable tax laws, see section 3.A.ii. of this preamble.

One comment suggested that the regulations should allow partners to supply information to the partnership and require that the partnership and the IRS apply this information in calculating the imputed underpayment. The comment also suggested there be a procedure for partners who are passive investors with respect to the partnership to have an opportunity to claim passive losses for net partnership adjustments on audits that increase income and cause the partnership to pay tax on their behalf.

As discussed earlier in this section of this preamble, the tax attributes of the partnership's partners generally do not factor into the preliminary determination of the imputed underpayment. Rather, the imputed underpayment determined under § 301.6225–1 is computed without regard to the partners' tax circumstances, for example whether a partner would be able to offset additional partnership income with additional deductions or whether a partner's tax attributes would reduce the amount of tax due as a result of the adjustments. See section 6225(b)(1)(B), (2) and (4). Modification as described under section 6225(c) and § 301.6225–2 is the more appropriate stage of the examination for the IRS to take into account specific partner tax attributes. Requiring the IRS to review the tax attributes of each partner within the context of the first phase of the partnership examination would undermine the centralized nature of the examination process. The comment's' recommendation to allow partners to present information during the partnership audit and require the IRS to incorporate that information into the imputed underpayment calculation would require the IRS to review and evaluate partner tax attributes in a way that would significantly impede upon the exam and create numerous administrative burdens for the government.

Notwithstanding these challenges, proposed § 301.6225–1(c)(1) and (d)(1) provided that the IRS may, in its discretion, place adjustments in groupings and subgroupings in a manner different from that described in the proposed regulations to appropriately reflect the facts and circumstances of each examination. This rule is intended to allow the partnership to provide information to the IRS to demonstrate that certain partner tax attributes should be taken into account when grouping and subgrouping to achieve a more appropriate netting of the adjustments.

The regulations give the IRS the discretion to decide whether or not to use this information in the initial examination phase, that is, prior to modification. This discretion is necessary because the partnership and the IRS may not agree as to whether the groupings and subgroupings requested by the partnership are appropriate. Requiring the IRS and the partnership to resolve such disagreements within the context of the first phase of the partnership proceeding would take time and resources away from the audit and thereby recreate the same problems associated with introducing partner tax attributes into the partnership level exam. If the partnership and the IRS do not agree on the groupings and subgroupings recommended by the partnership during the exam, the partnership is not without recourse. The partnership may request during modification that the IRS include one or more partnership adjustments in a particular grouping or subgrouping or request that certain partnership adjustments be treated as if no limitations or restrictions apply with the result those adjustments may be subgrouped with other adjustments. See § 301.6225–2(d)(6).

Accordingly, modification is generally the appropriate point in the administrative phase at which partner tax attributes may be raised by the partnership and considered by the IRS. For example, the partnership and its partners can utilize the amended return procedure or the alternative procedure to filing amended returns, which require partners to take the adjustments into account in light of their individual tax attributes. Those procedures would potentially allow partners to offset passive income with any passive losses, consistent with the procedure recommended by the comment. In the alternative, the partnership may elect to push out the adjustments under section 6226, and the partners would be required to take into account the adjustments and any effects on the partners' tax attributes. At that stage, the partners could use passive losses to the extent permitted by the rules under § 301.6226–3 (regarding how partners take into account pushed out adjustments).

Although the IRS is permitted to consider partner tax attributes during the first phase of the partnership exam, the statute and the regulations provide clear guidance on the modification process and specifically how a partnership may request that partners' tax attributes be taken into account to reduce the imputed underpayment. Limiting the requirement that the IRS consider such information to the modification stage is efficient for both the IRS and the partnership because it ensures that the first phase of the exam is focused on the substance of what adjustments must be made at the partnership level, rather than on specific partner attributes.

For these reasons, the comment suggesting a rule that permits partners, as a matter of right, to present information regarding their tax attributes during the partnership audit is not adopted. However, a partnership may request that the IRS take into account facts and circumstances relating to its partners pursuant to the rules under § 301.6225–1(d)(1) and (e)(1), which may allow for more appropriate grouping and subgroupings of adjustments. The comment's recommendation that the IRS be required to apply such information during the netting process was not adopted. The partnership may, however, request during modification to reduce the amount of the imputed underpayment based on the partners' specific tax attributes.

Another comment stated the proposed regulations create a divergence between the imputed underpayment amount and the cumulative amount that the reviewed year partners would have to pay if the adjustments were allocated to them. The comment described two situations to illustrate this concern. In the first situation, one adjustment increases ordinary income, and another adjustment decreases capital gain. The comment concludes that because the proposed regulations do not allow the decrease in capital gain to be netted against the increase in ordinary income, the partners may have overpaid tax with respect to the capital gain. In the second situation, one adjustment increases capital gain, and another adjustment decreases ordinary income. The comment concludes that because the proposed regulations do not allow the decrease in ordinary income to be netted against the increase in capital gain, the partners may have overpaid tax with respect to the ordinary income. The comment suggested that the Treasury Department and the IRS should ensure that the government does not seek an increase in tax collections solely because the partnership bears the burden for the tax. This comment was not adopted because its conclusions are based on assumptions that may not apply in all situations and section 6225(b)(1)(A) requires that adjustments are "appropriately netted" taking into consideration the further limitation of section 6225(b)(4) which does not permit the netting of adjustments that would reduce the imputed underpayment with other adjustments. The comment's suggestion presents the same issues described earlier in this section of the preamble regarding the introduction of partner tax information in the partnership level proceeding.

The comment's conclusions that the partners may have overpaid tax with respect to the decreased capital gain or the decreased ordinary income may be true in some cases. Without a review of the partners' accounts or some affirmation from the partners that they did pay tax, the IRS cannot be certain this is true in all cases or any one particular case. For example, a partner may have been in an overall loss position for the taxable year, may not have originally reported the decreased item, or may not have filed a return. As discussed earlier in this section of this preamble, the initial phase of the examination is not designed for the IRS to consider the specific circumstances of any partners. A rule requiring the IRS to consider specific partner circumstances would require the IRS to review each partner's account and prior returns to ensure that the partner previously took an item into account and paid tax on that item. Such a rule would create significant burden on the IRS during the initial exam phase and undermine a core aspect of the centralized partnership audit regime's shifting of the burden from the IRS to the partnership and its partners. As discussed earlier in this section of this preamble, a partnership may request that tax attributes are accounted for by using the modification procedures or the partnership may make the election under section 6226.

The comment also appears to conclude that if all partnership adjustments were netted, the imputed underpayment would result in some number closer to the amount the reviewed year partners would have to pay if the adjustments were allocated to them. While this may be true in some cases, it would not occur in all situations. For instance, assume the partner in the first situation described by the comment had not reported and paid tax with respect to the capital gain that was then decreased on examination. If the regulations permitted the decreased capital gain to be fully netted against the increased ordinary income, the result may lead to little or no imputed underpayment, even though the partner had not paid tax on the capital gain that was reduced. In that case, no tax was paid by the partner on the capital gain (as originally allocated to the partner) and no tax was paid by the partnership with respect to the increased ordinary income, even though the partnership had additional ordinary income that should have been allocation to the partner. While the comment stated that the netting process under proposed § 301.6225–1 eliminated situations that would benefit the taxpayer, the comment did not acknowledge that the statutory structure of section 6225 mandates this result. The comment also does not acknowledge that the netting process as enacted in the statute and implemented in the regulations also protects the IRS, for instance in cases where the partner did not pay tax on an adjusted item. During the initial phase of determining the imputed underpayment, the rules should not require the IRS to take steps to ameliorate a potential discrepancy in payment amounts based on facts applicable in one situation if the rule would result in distortions for taxpayers with different facts.

As discussed earlier in this section of this preamble, "appropriately netting" within the meaning of section 6225(b)(1)(A) means, as a general matter, that when netting partnership adjustments for purposes of determining an imputed underpayment, all limitations under the Code should be considered, including limitations that would otherwise prevent the partnership from netting certain items. Section 6225(b)(4)'s rule regarding taxpayer favorable adjustments subject to additional limitations under the Code if taken into account by any person supports this interpretation. Because certain items could be subject to limitations in the hands of certain partners, the statute requires that limitations be accounted for by assuming they exist for purposes of determining the imputed underpayment during the initial stage of the examination. The partnership may ameliorate any discrepancies caused by that assumption by demonstrating that no such limitations exist either under § 301.6225–1(d)(1) or (e)(1) or in the modification phase. The partnership can also make the election under section 6226, and the partners will account for such limitations when taking into account the adjustments.

The comment suggested specific approaches to ameliorate the concerns it raised. First, it suggested a rule that would allow an ordinary income grouping to be reduced by a capital loss grouping to the extent of $3,000 per direct or indirect individual partner. Second, it suggested a rule that would apply the applicable rate for net negative adjustments to the relevant subgrouping and allow this amount to reduce the imputed underpayment amount. Neither of these specific recommendations was adopted.

The Code permits corporate taxpayers to deduct capital losses to the extent of capital gains. Section 1211(a). In the case of taxpayers other than corporations, the Code allows a deduction for any capital loss exceeding capital gain up to $3,000 ($1,500 in the case of a married individual filing separately). Section 1211(b). A rule allowing an offset of $3,000 against an increase in ordinary income in the situations described by the comment would require the IRS to first determine that the partners in the partnership are taxpayers other than corporations such that the rules under section 1211(b) apply. While this may be a relatively simple determination in some cases, requiring the IRS to engage in making the determination contravenes the principle that partners' tax attributes, including partner identity, are generally not accounted for in the initial imputed underpayment calculation.

To the extent the rule recommended by the comment is based on the premise that each partner would be entitled to a $3,000 capital loss, that premise is faulty. One, such a rule would require the IRS to know whether there are no other capital gains (related or unrelated to the partnership) against which the non-corporate partners would first be required to offset the additional capital loss. Two, the rule would require the IRS to consider whether the partner was not an individual subject to the lower deduction amount of $1,500 allowed by section 1211(b). This process would become more burdensome as the number of partners and tiers increased. Accordingly, this comment was not adopted. To extent that this comment recommended a rule that allowed more flexibility for the IRS to group adjustments according to the facts and circumstances of the partners, that rule is reflected in proposed § 301.6225–1(d)(1) and (e)(1) as revised in the August 2018 NPRM. A partnership that wishes to request that the IRS take into account its partner's tax circumstances, including that certain partners are otherwise entitled to a capital loss deduction under section 1211(b), may utilize the discretionary grouping and subgrouping rules under § 301.6225–1(d)(1) and (e)(1) or make a modification request under § 301.6225–2(d)(6).

With respect to the recommendation that the regulations apply the applicable rate for net negative adjustments to the relevant negative subgrouping and allow this amount to reduce the imputed underpayment amount, this recommendation was also not adopted; however, the final regulations allow for the result requested by the comment depending on the facts and circumstances. The comment suggests that the rate used in determining an imputed underpayment should be applied to negative adjustments that would otherwise be adjustments that do not result in an imputed underpayment and allow those negative adjustments to net with other positive adjustments in an effort to calculate an amount that would more closely reflect what the partners would have paid if they had properly reported the adjusted items. Section 6225(b)(1) provides that the imputed underpayment is determined by appropriately netting all partnership adjustments and applying the highest rate of tax under section 1 or 11. Section 6225(b)(3) requires that the partnership adjustments are first 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 the Code. When "appropriately netting" under section 6225(b)(1)(A), section 6225(b)(4) requires that negative adjustments that could be subject to any limitation or restriction if taken into account by any person be disregarded unless provided otherwise by regulation. The regulations incorporate this rule in § 301.6225–1(d)(3). The regulations also provide the ability, however, to take facts and circumstances into account to allow negative or downward adjustments, where appropriate, to be subgrouped and thus netted with other adjustments. See § 301.6225–1(d)(1). For these reasons, the final regulations maintain the process for subgrouping and netting as provided for in the proposed regulations.

ii. Subgrouping Principles

Before being revised in the August 2018 NPRM, former proposed § 301.6225–1(d) had provided that after grouping the adjustments, partnership adjustments are further subgrouped based on preferences, limitations, restrictions, and conventions, such as source, character, holding period, or restrictions under the Code applicable to such items. One comment stated that the proposed grouping and subgrouping rules under former proposed § 301.6225–1(d) unfairly removed many relevant distinctions between different types of items and adjustments and netted items that do not properly net against each other at the entity level, including intangible drilling costs, section 1231 gains and losses, and whether a particular partner is considered active or passive in his or her relationship to the partnership. Another comment recommended that the final regulations should also include a clear statement that the netting process will be applied in accordance with generally applicable tax law. Both comments are addressed by the amendments made by the TTCA to section 6225(b).

Section 202(a) of the TTCA added section 6225(b)(3) to provide that partnership adjustments 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 the Code. Section 6225(b)(4) provides if any adjustment would (but for section 6225(b)(4)) result in a decrease in the amount of the imputed underpayment, and could be subject to any additional limitation under the provisions of the Code (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 when appropriately netting partnership adjustments under section 6225(b)(1)(A) except to the extent otherwise provided by the Secretary.

Former proposed § 301.6225–1(d) was revised in the August 2018 NPRM to account for the additions of sections 6225(b)(3) and (4). Proposed § 301.6225–1(d)(3)(i) provided that adjustments are subgrouped, when appropriate, according to how the adjustment would be required to be taken into account separately under section 702(a) or any other provision of the Code or regulations applicable to the adjusted partnership-related item. By separating adjustments into subgroupings according to how and whether the adjustments would be separately stated pursuant to section 702(a), the rules under § 301.6225–1(d)(3)(i) ensure that items that do not properly net against each other at the partnership level under section 702(a) do not net against each other for purposes of determining an imputed underpayment.

For example, under § 301.6225–1(c) a positive adjustment to intangible drilling costs and a negative adjustment to gain or loss from a sale of property described in section 1231 are both placed in the residual grouping. Pursuant to § 301.6225–1(d)(3)(i), each adjustment is then placed in a separate subgrouping to reflect that one adjustment is a negative adjustment and that the items being adjusted are required to be separately stated pursuant to section 702(a). See section 702(a)(3), § 1.702–1(a)(8)(i). Under § 301.6225–1(e)(1), adjustments from separate subgroupings cannot be offset against one another. Accordingly, just as a positive amount of intangible drilling costs would not be netted with a section 1231 loss under section 702(a), a positive adjustment to intangible drilling costs would not net against a negative adjustment to 1231 gain or loss for purposes of determining an imputed underpayment.

Some items that are not separately stated pursuant to section 702(a) may nevertheless be subject to other limitations under the Code or may not otherwise be allowed to net against ordinary income. To account for those types of limitations, proposed § 301.6225–1(d)(3)(i) further provided that if any adjustment could be subject to any preference, limitation, or restriction under the Code (or not allowed, in whole or in part, against ordinary income) if taken into account by any person, the adjustment is placed in its own separate subgrouping. For example, an increase in loss attributable to a trade or business activity of the partnership may not be deductible in the hands of a particular partner because that partner did not materially participate in the partnership activity. See section 469. Because the loss may be limited in the hands of a particular partner, the increase in loss is placed in its own separate subgrouping to prevent any inappropriate netting against an adjustment increasing income of the partnership.

Accordingly, both the comment expressing concerns about the netting of items that do not properly net against each other at the entity level and the comment suggesting the regulations apply general principles of tax law were addressed by the changes to section 6225 in the TTCA and the subgrouping rules under § 301.6225–1(d)(3)(i) as revised in the August 2018 NPRM. As a result, the final regulations were not revised in response to these comments.

Generally, under § 301.6225–1(d), reallocation adjustments must be placed into their own subgroupings, but there is an exception for when multiple reallocation adjustments apply to a single partner or group of partners. Proposed § 301.6225–1(d)(3)(ii) provided that if a particular partner or group of partners has two or more reallocation adjustments allocable to such partner or group, such adjustments may be subgrouped in accordance with § 301.6225–1(d)(3)(i) and netted in accordance with § 301.6225–1(e). Proposed § 301.6225–1(d)(3)(iv) provided a similar rule with respect to recharacterization adjustments.

In January 2017, a prior version of the June 2017 NPRM was made publicly available but was not published in the **Federal Register.** The unpublished version of the June 2017 NPRM contained an example under former proposed § 301.6225–1(f) (former Example 3) which was not contained in the June 2017 NPRM that was published in the **Federal Register.** One comment recommended that former Example 3 be added back to the regulations. This comment was not adopted. The Treasury Department and the IRS considered reviving former Example 3, but because of the changes to section 6225 in the TTCA, former Example 3 did not comport with the statute or the proposed regulations. Instead of reviving former Example 3, a new example was added, Example 12, to clarify subgrouping principles in the case of facts similar to, but slightly different from, the facts in former Example 3.

One comment recommended that the regulations clarify whether and under what conditions positive and negative adjustments resulting from different reallocation or recharacterization adjustments are permissibly placed in the same subgrouping. The comment stated that the language of both proposed § 301.6225–1(d)(3)(ii) and (iv) seemed to allow the inclusion in the same subgrouping of unrelated positive and negative adjustments provided that all of the adjustments apply to a particular partner or group of partners. The comment suggested that the final regulations include examples clarifying the proper grouping and netting of adjustments pursuant to § 301.6225–1(d)(3). The addition of Example 12 under § 301.6225–1(h) provides the example suggested by the comment. As discussed earlier in this section of this preamble, Example 12 clarifies operation of the rule under § 301.6225–1(d)(3)(ii) allowing for adjustments to be subgrouped together when the adjustments are allocable to a particular partner or group of partners. Although Example 12 illustrates these concepts in the context of reallocation adjustments, the example's analysis is equally applicable to recharacterization adjustments. The result demonstrated by Example 12 under § 301.6225–1(h) of the rule under § 301.6225–1(d)(3)(ii) for reallocation adjustment subgroupings would not be the result if the negative adjustments in that example were subject to limitations described in section 6225(b)(4) and § 301.6225–1(d)(3)(i).

iii. Negative Adjustments

Under § 301.6225–1(e), adjustments from each subgrouping (or grouping if there is no subgrouping within that grouping) are netted to produce either a net positive adjustment or a net negative adjustment with respect to each grouping or subgrouping. When determining an imputed underpayment, generally only net positive adjustments are taken into account, and net negative adjustments are generally treated as adjustments that do not result in an imputed underpayment. Adjustments to credits and creditable expenditures are treated separately. See section 3.A.vi. of this preamble.

One comment suggested that the requirement that only net positive adjustments are taken into account in determining an imputed underpayment will frequently result in double taxation of the same income items. The comment cited to Example 4 under proposed § 301.6225–1(h) (Example 3 in former proposed § 301.6225–1(f)) to demonstrate this point. In Example 4, the IRS determines that $125 of long-term capital gain should have been reported as $125 of ordinary income, resulting in a $125 increase in ordinary income and a corresponding $125 decrease in long-term capital gain (a $125 increase in long-term capital loss). The increase in ordinary income results in an imputed underpayment, and the increase in long-term capital loss is an adjustment that does not result in an imputed underpayment.

To the extent the comment was suggesting that the example does not specify what happens with respect to the $125 increase in long-term capital loss, the example was revised in the August 2018 NPRM to clarify that this loss is taken into account in accordance with § 301.6225–3. Under § 301.6225–3(b), the partnership takes into account the adjustment increasing long-term capital loss in the adjustment year. Alternatively, the partnership may request modification under section 6225(c) or make a push out election under section 6226 to ensure that the negative adjustment is taken into account by the partnership's reviewed year partners, rather than in the adjustment year by its adjustment year partners.

To the extent the comment was expressing more general concerns about double taxation, proposed § 301.6225–1(b)(4) was added in the August 2018 NPRM to provide that if the effect of a partnership adjustment under chapter 1 of the Code is reflected in another adjustment taken into account in the imputed underpayment determination, the IRS may treat an adjustment as zero for the purposes of calculating the imputed underpayment. This rule is designed to ensure that when calculating an imputed underpayment, an adjustment is not counted twice if the tax effect of that adjustment is reflected by another adjustment made by the IRS. A partnership may request that the IRS utilize this rule to treat an adjustment as zero if there is the partnership is concerned about double taxation. Accordingly, to the extent the comment was raising concerns about double taxation, no changes were made to the regulations in response to the comment.

The final regulations under § 301.6225–1(b)(4) do, however, clarify that the IRS has the discretion to treat adjustments as zero for purposes of determining the imputed underpayment if the effect of the adjustment under the Code is reflected in another adjustment. The language requiring that the adjustment must have previously been taken into account under § 301.6225–1 was removed. This change provides the IRS the discretion to treat a partnership adjustment as zero in more situations. For instance, the effect of an adjustment may be reflected in an adjustment to an item treated inconsistently under section 6222(c). The final regulations under § 301.6225–1(b)(4) also remove the language limiting the rule's application to chapter 1. Under the final regulations, the rule applies to the effect of an adjustment under the Code in general. This change also gives more flexibility to the IRS to treat partnership adjustments as zero for purposes of determining the imputed underpayment amount.

iv. Other Suggestions Regarding Grouping and Netting Adjustments

One comment suggested that its concerns with the grouping and netting rules might be alleviated by allowing the partnership to treat the partnership adjustment as if it arose during the adjustment year rather than the reviewed year, which would synchronize the imposition of the tax in the adjustment year with the adjustment year partners bearing the liability for the imputed underpayment. This comment was not adopted because it is contrary to the plain language of the statute.

Section 6225(a)(1) refers to adjustments to partnership-related items "with respect to any reviewed year." Section 6225(b)(1) provides that any imputed underpayment "with respect to any reviewed year" shall be determined by appropriately netting all partnership adjustments "with respect to such reviewed year." In addition, section 6225(d)(2) defines adjustment year to mean, in the case of an examination, the year in which an FPA is mailed under section 6231 or in the case of adjustment pursuant to a decision in a proceeding under section 6234, the year in which the decision is final. Accordingly, at the time of the modification phase of the examination, the adjustment year will not yet be determined.

If the comment's suggestion were adopted and adjustments were treated as having arisen in the adjustment year, it is unclear whether the reviewed year partners' or the adjustment year partners' tax attributes would be relevant in the modification determination. The modification period will in every case come before the issuance of the FPA. As a result, the adjustment year will not yet have been determined, and therefore the adjustment year partners will not yet be known. In addition, section 6225(c)(2) provides the ability for partners to file amended returns in modification. The statute's use of the phrase "amended return" implies that a prior return must have been filed. A prior return could not have been filed for the adjustment year at this point in the examination because the adjustment year would not yet be determined. The partners from the reviewed year, therefore, must be the partners that utilize the modification procedures under section 6225(c)(2) through the filing of amended returns for the reviewed year. The reviewed year partners' amended returns could not take into account adjustment year adjustments and apply them against reviewed year returns. Accordingly, the plain language of the statute indicates that adjustments for purposes of determining an imputed underpayment are the adjustments with respect to a reviewed year, not the adjustment year.

Furthermore, section 6225(a)(1) provides the partnership shall pay an amount equal to such imputed underpayment in the adjustment year as provided in section 6232. In the case of adjustments that do not result in an imputed underpayment, section 6225(a)(2) provides that such adjustments shall be taken into account in the adjustment year. Section 6225(a)(2)'s explicit statement that adjustments not resulting in an imputed underpayment are taken into account in the adjustment year, and the absence of similar language in section 6225(a)(1) makes clear that only those partnership adjustments that do not result in an imputed underpayment are taken into account in the adjustment year.

Accordingly, a reasonable reading of the statutory language of section 6225(a) supports an interpretation that adjustments with respect to the reviewed year should be treated as such for purposes of determining an imputed underpayment and not treated as adjustments arising in the adjustment year. However, § 301.6225–3 does provide that adjustments that do not result in an imputed underpayment are taken into account in the adjustment year, that is, when the imputed underpayment is also required to be paid. To that extent, any adjustments that do not result in an imputed underpayment may mitigate the burden of the imputed underpayment on adjustment year partners.

Another comment stated that the time shifting of the tax on partnership examination adjustments from the reviewed year to the adjustment year is inappropriate and that tax on partnership examination adjustments should arise in the reviewed year and not in the adjustment year. The comment further states that the burden of the payment in all cases should fall directly on the reviewed year partners and that the rules should require the reviewed year partners to amend their reviewed year tax returns to include their shares of the partnership examination adjustments. The comment was not adopted because all of the changes recommended by the comment would require amendments to the statute.

Section 6225 provides that if the 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. Accordingly, the year partnerships must pay is, by statute, the adjustment year, and if the partnership pays the imputed underpayment without modification or does not make an election under section 6226, the statute is designed so that the adjustment year partners bear the burden of that payment. See section 6241(4) and § 301.6241–4 (denying any deduction to the partnership for any payment made by the partnership, including the imputed underpayment). Additionally, there is no authority within subchapter C of chapter 63 to allow the Treasury Department or the IRS to require that reviewed year partners file amended returns, though partners have the option to do so in modification. The partnership may also make the election under section 6226 which would result in adjustments relating to the imputed underpayment for which the election was made being taken into account by the reviewed year partners.

Another comment suggested treating an audited partnership as an "entity" rather than an "aggregate" solely for the purposes of calculating the imputed underpayment based on majority ownership of the partnership (measured by the partners' interest in profits). Specifically, the comment suggested that if more than 50% of the interest in a partnership's profit is held by one or more individuals, S corporations, or closely-held corporations, the provisions of the Code that apply to individuals should apply for purposes of determining the amount of any imputed underpayment. This comment was not adopted.

As discussed earlier in this section of this preamble, section 6225 is prescriptive as to how an imputed underpayment is determined. The determination process expressly does not determine the imputed underpayment as if the partnership were an individual or an entity. Instead, the process for determining the imputed underpayment, including "appropriately netting all partnership adjustments" under section 6225(b)(1)(A) in accordance with § 301.6225–1 generally does not take into account partner tax attributes, including whether a partner is an individual or a person subject to the Code provisions that apply to individuals. The IRS has the discretion to take into account an attribute of a particular partner when grouping or subgrouping the adjustments, but the IRS is not required to do so. § 301.6225–1(d)(1), (e)(1). For instance, the IRS may consider whether a certain ownership percentage of the partnership was held by individuals, S corporations, or closely-held corporations and group adjustments based on information submitted by the partnership. However, a rule *requiring* the IRS to treat all partnership adjustments as if they were being taken into account by an individual as the comment suggests is inconsistent with the statutory requirement to net items appropriately. A rule that required the IRS to do so would also potentially disadvantage certain partnerships depending on the nature of adjustments and the types of the partners.

Moreover, it is not clear that the comment's suggestion of accounting for the individual tax attributes of specific partners and applying the Code's rules regarding those partners would yield an appropriate netting of the adjustments for purposes of determining the imputed underpayment at the partnership level. For example, the Code's rules may apply differently to one individual partner versus another individual partner. Treating all individual partners in the same manner would negate operation of those rules. Accordingly, there is no reason to conclude that treating adjustments according to how some but not all partners' tax attributes would affect an adjustment is any more reasonable than not taking into account any partners' tax attributes. The statute provides a baseline assumption that partners' tax attributes are not taken into account. The imputed underpayment that best reflects the facts and circumstances of the partners should be determined through application of the permissive grouping and subgrouping rules under § 301.6225–1(d)(1), (e)(1) or through modification. Accordingly, the final regulations do not adopt the comment's suggestion to base the imputed underpayment determination on the identity of the majority of the partnership.

Section 6225(b) only provides specific rules with respect to one type of adjustment, that is, the rule that adjustments to distributive shares of partners not be netted under section 6225(b)(2). While it is true a determination regarding an adjustment described in section 6225(b)(2) is usually made with some knowledge of the partners' distributive shares, such a determination does not account for the particular tax attributes of any specific partner. The IRS is not required to know any other information about the specific partners at the initial examination phase to reallocate adjustments between partners. Therefore, in order to effectuate the rule under section 6225(b)(2), there is no need to know whether a partner is an individual, a corporation, a pass-thru partner, or some other entity. Section 6225(b)'s lack of reference to any particular tax attributes of specific partners indicates that the determination of an imputed underpayment is not dependent on knowing any partner's specific tax attributes.

The same comment suggested another alternative in which the grouping and netting rules would account for current year partner attributes for purposes of determining an imputed underpayment. The comment cited the amendment to section 6225(a) by TTCA that provides if the partnership adjustments do not result in an imputed underpayment, such adjustments shall be taken into account by the partnership in the adjustment year. This comment was not adopted.

Section 6225 does not reference either partner tax attributes or current year partners as a consideration in determining the imputed underpayment. As discussed earlier in this section of this preamble, the Treasury Department and the IRS have determined a reasonable interpretation of section 6225(b) supports a process in which the determination of the imputed underpayment does not depend on specific partners' tax attributes. Moreover, the comment's reference to "current year" is ambiguous; it could refer to any number of different time periods: the adjustment year, the actual calendar year in which the imputed underpayment is being determined, the year the imputed underpayment is proposed in a notice of proposed partnership adjustment, the time during the modification period prior to issuance of the FPA, or, if the partnership contests the partnership adjustments in court, the year the court decision is final. It is not administrable for the IRS to determine an imputed underpayment based on the potential tax attributes from time periods that are not fixed relative to the reviewed year and that may result in different partners being the relevant partners. The final regulations reflect the amendments to section 6225 by the TTCA, and therefore the final regulations were not revised in response to this comment.

v. Recharacterization Adjustments

One comment recommended that the grouping and subgrouping rules be reconsidered due to the concern that under the proposed regulations, the inability to net certain overpayments and underpayments could lead to taxpayers not receiving an appropriate adjustment for taxes previously paid. The comment cited to Example 4 under proposed § 301.6225–1(h) to highlight this concern. In Example 4, the IRS determines that $125 of long-term capital gain should have been reported as $125 of ordinary income, resulting in a $125 increase in ordinary income and a corresponding $125 decrease in long-term capital gain (effectively, a $125 increase in long-term capital loss). The increase in ordinary income results in an imputed underpayment, and the increase in long-term capital loss is an adjustment that does not result in an imputed underpayment.

The comment noted that the example does not specify what happens with respect to the $125 increase in long-term capital loss. As discussed earlier in section 3.A.iii. of this preamble, the example has been revised to clarify that $125 increase in long-term capital loss is taken into account in the adjustment year in accordance with § 301.6225–3. The comment also noted that it is unknown whether the partnership will be able to use the increased capital loss in the future. To avoid this potential adverse consequence, the comment recommended that the regulations permit a partnership to net adjustments across different categories of gain or loss to reflect taxes that were previously paid. This comment was not adopted for several reasons.

As an initial matter, implicit in the comment's suggestion is that either the IRS or the partnership have knowledge of taxes previously paid by the partners. As discussed earlier in section 3.A.i. of the preamble, facts and circumstances unique to specific partners are generally not taken into account in determining whether the adjustments result in an imputed underpayment. The regulations give the IRS wide latitude to consider such facts and circumstances, but the rules do not narrowly define the circumstances when that occurs. See § 301.6225–1(d)(1) and (e)(1). The regulations are designed to maintain flexibility for both the IRS and the partnership to allow for the particular examination to accommodate the unique circumstances of each examination. Based on these reasons alone, the comment's suggestion was not adopted.

The comment's suggestion was also not adopted because it is inconsistent with the overall approach applied to how recharacterization adjustments are taken into account in determining an imputed underpayment. Proposed § 301.6225–1(c)(6)(iii) provided that a recharacterization adjustment results in at least two separate adjustments: one adjustment reversing the improper characterization of the partnership-related item, and the other adjustment effectuating the proper characterization of the partnership-related item.

Generally, one of those adjustments is a positive adjustment and the other is a negative adjustment, but each adjustment is normally the same numerical amount ($125 in the case of Example 4 under proposed § 301.6225–1(h)). Under proposed § 301.6225–1(d)(3)(iv), the positive adjustment and the negative adjustment are each placed into its own separate subgrouping. Because an adjustment in one subgrouping may not be netted against an adjustment from another subgrouping, the positive adjustment is not offset by the negative adjustment, and the result is a net positive adjustment that forms the base for an imputed underpayment amount. Proposed § 301.6225–1(e)(2) and (3)(i).

These rules are adopted largely without change in the final regulations in order to ensure that recharacterization adjustments are not inappropriately netted when determining an imputed underpayment, as required by section 6225(b)(1)(A). Allowing for the netting of the negative adjustment against the positive adjustment in the case of a recharacterization adjustment, as suggested by the comment, could cause the positive adjustment to be negated in its entirety, which would defeat the purpose of making the adjustment in the first place. It would also result in the recharacterization adjustment not properly being reflected in the imputed underpayment calculation. For instance, allowing the capital loss to fully offset the ordinary income in Example 3 under § 301.6225–1(h) would not adequately reflect the fact that there was an underreporting of ordinary income by the partnership for that taxable year. Furthermore, if there were no imputed underpayment because recharacterization adjustments were allowed to net, there would be no statutory basis for imposing an interest charge on the partnership as suggested by the comment.

Accordingly, the comment's suggestion to net adjustments across different categories of gain or loss to reflect taxes that were previously paid was not adopted, though the effect of such adjustments may be mitigated, in whole or in part, under certain circumstances through the modification procedures or by making a push out election under section 6226. The final regulations under § 301.6225–1(e)(2) do clarify, however, that positive adjustments and negative adjustments within the same subgrouping may only net within that same subgrouping. No netting is permitted across subgroupings.

vi. Credits and Creditable Expenditures

In determining whether partnership adjustments result in an imputed underpayment, adjustments to credits are placed in the credit grouping described under § 301.6225–1(c)(3). One comment suggested that for administrative efficiency, it would make sense to group and order credits in accordance with Form 3800 and recommended that the regulations provide for grouping and ordering credits in such a manner. This comment was not adopted.

As discussed earlier in section 3.A.ii. of this preamble, the subgrouping rules under § 301.6225–1(d)(3)(i), including the application of those rules to the credit grouping, take into account any limitations or restrictions under the Code. Therefore, to the degree the Code would require certain credits to be subgrouped within the credit grouping to reflect any limitations or restrictions, the rules under § 301.6225–1(d)(3)(i) allow for that result. In addition, when determining subgroupings the IRS may take into account the facts and circumstances of a partnership and its partners. It may be the case that the subgroupings with respect to a particular set of adjustments ultimately reflects the manner in which credits are grouped and ordered on Form 3800, but that may not always be the case. The regulations provide the necessary flexibility to achieve the result suggested by the comment without binding the IRS and partnerships to a particular manner in which credits must be subgrouped.

Additionally, because the Form 3800 and the underlying statutory rules it reflects may change over time, it is unwise to link the regulatory rules for subgrouping with the form's methodology for grouping credits. Relying on the general subgrouping rules under § 301.6225–1(d)(3)(i) gives the IRS and partnerships the flexibility to adapt to changes in the Code and any form changes without needing to amend the regulations.

Adjustments to creditable expenditures are placed in the creditable expenditure grouping described under § 301.6225–1(c)(4). Proposed § 301.6225–1(c)(4)(B), (d)(3)(iii), and (e)(3)(iii) provided specific rules relating to foreign creditable tax expenditures. Aside from the general rule regarding what constitutes a creditable expenditure, no additional rules relating to creditable expenditures were proposed.

The Treasury Department and the IRS requested comments on the appropriate treatment of creditable expenditures. One comment suggested any items that may be treated as a credit when taken into account by a partner and not otherwise limited (for instance, by their non-creditable status against the alternative minimum tax) be credited against the imputed underpayment amount. For other items which may be subject to limitations at the individual level, the comment suggested that the regulations provide rules similar to those rules proposed under proposed § 301.6225–3, regarding adjustments that do not result in an imputed underpayment, because any adjustment to a credit would not result in an imputed underpayment.

With the exception of the rules under § 301.6225–1 regarding foreign tax creditable expenditures, the Treasury Department and the IRS have determined not to issue regulations regarding the treatment of creditable expenditures at this time. However, the final regulations do clarify that the general subgrouping principles under § 301.6225–1(d)(3)(i) apply when subgrouping adjustments to creditable expenditures. The comments received with respect to creditable expenditures remain under consideration, and future guidance will be issued when appropriate. The final regulations also clarify that a net positive adjustment to creditable foreign tax expenditures is excluded from the calculation of the total netted partnership adjustment under § 301.6225–1(b)(2).

Comments were also requested regarding how credit recapture situations should work under the centralized partnership audit regime. One comment offered suggestions with respect to two credit recapture situations. The first situation involved a credit recapture that results from a partnership adjustment. The comment recommended in that situation that the regulations should incorporate any credit recapture into the calculation of any imputed underpayment to the extent that the originating credits were generated from partnership activities, but that this incorporation should be limited to partnerships with partners that actually would have benefited from the original credits. This recommendation was partially adopted.

A recapture of a credit generated by partnership activities constitutes a partnership adjustment as defined under § 301.6241–1(a)(6), and the credit recapture would constitute a positive adjustment under § 301.6225–1(d)(2)(iii)(A) and be placed in the credit grouping under § 301.6225–1(c)(3). The full amount of the credit recapture would be taken into account in the determination of the imputed underpayment, unless the partnership requests, subject to IRS approval, that the credit recapture should be taken into account differently during the partnership-level proceeding or pursuant to a modification request. See § 301.6225–1(d)(1), (e)(1), § 301.6225–2. This rule is necessary because, as discussed earlier in this section of this preamble, in general, the initial determination of an imputed underpayment does not account for the attributes of the partnership's partners, including whether and to what extent any partners actually benefited from the original credits. Accordingly, the final regulations include a credit recapture amount in the amount of the imputed underpayment, and this amount is not limited to the amount partners actually benefited from the recaptured credits unless the partnership can affirmatively demonstrate to the satisfaction of the IRS during exam either before issuance of the NOPPA or on modification the appropriate partner-level tax treatment.

The second situation described by the comment involves a partnership adjustment that results in a credit that is incorporated into the imputed underpayment calculation, presumably as a reduction to the imputed underpayment and that may later be subject to recapture. The comment recommended that the regulations require the partnership to notify partners that they received the benefit of such credits and that the partners may be obligated to recapture those credits at a later date. The comment suggested this notice could be provided as notes to the adjustment year Schedule K–1. This comment was not adopted. The final regulations do not require that the partnership notify the partners of any risk of future credit recapture, though the partnership is not prohibited from doing so if the partnership determines that such notification would be beneficial to the partners and the partnership. Except where required for the operation of the provisions of the centralized partnership audit regime, the Treasury Department and the IRS do not generally regulate communications between the partnership and the partners, and therefore the final regulations do not impose a requirement for notification by the partnership concerning possible credit recaptures.

Because a net negative adjustment to a credit, that is, an increase in an item of credit, would generally be subject to limitations under the Code, the final regulations under § 301.6225–1(e)(3)(ii) clarify that a net negative adjustment to a credit is treated as an adjustment that does not result in an imputed underpayment as described in § 301.6225–1(f)(1), unless the IRS determines otherwise. This rule ensures that the total netted partnership adjustment is not inappropriately reduced by an increase in credit that would subject to limitations in the hands of the partners of the partnership.

B. *Modification of an imputed underpayment*

Proposed § 301.6225–2 provided the rules and procedures regarding modification of an imputed underpayment by the partnership. The Treasury Department and the IRS received multiple comments regarding proposed § 301.6225–2 focusing on the following areas: (1) modification in general; (2) timing of modification requests and determinations; (3) amended return modification; (4) the alternative procedure to filing amended returns; (5) rate modification; (6) modification pertaining to certain passive losses of publicly traded partnerships; (7) modification pertaining to qualified investment entities; (8) closing agreement modification; and (9) recommendations to add additional types of modifications.

i. Comments Pertaining to Modification in General

The modification provisions under § 301.6225–2 are designed to determine an imputed underpayment amount that reflects, as closely as possible, the tax the partners would have paid had they correctly reported the adjusted items, while at the same time maintaining the efficiencies of a streamlined examination and collection process. See JCS–1–16 at 65–66. One comment suggested, that the modification provisions do not operate as intended because those provisions do not expressly permit a modification to reflect how the partners actually took an item into account, to account for reductions that would be permitted to offset an increase under generally applicable law, or to otherwise expressly challenge the IRS's method of calculating a proposed adjustment amount. Except as described later in this section, no changes to the regulations were made in response to this comment.

The Treasury Department and the IRS do not agree with the comment's characterization of how the modification provisions operate because the modifications available under § 301.6225–2 permit a partnership to achieve the results sought by the comment. For instance, both the amended return procedure and the alternative procedure to filing amended returns provide an opportunity for the partnership to request modification to reflect how an item was actually taken into account by its partners and to account for offsetting reductions permitted under generally applicable law. When a partner files an amended return including his share of the partnership adjustments, the amended return reflects a tax amount based on how the partner originally reported the partnership-related item prior to adjustment compared to how the partnership adjustment affects the partner's original return. This tax amount is the correct amount of tax for that partner after taking into account the partnership adjustment and includes any allowable reductions that may offset any additional income determined at the partnership level.

Regarding the comment's concern that a partnership does not have an opportunity to challenge the IRS's method of calculating a proposed adjustment amount, proposed § 301.6225–2(d)(6) provided a procedure for modifying the composition of an imputed underpayment. Under § 301.6225–2(d)(6), a partnership may request that the IRS include one or more partnership adjustments in a particular grouping or subgrouping. If certain negative partnership adjustments should be treated as if no limitations or restrictions in fact apply to the partners to whom the adjustments are allocated and the partnership can establish this result, if approved, on modification, such negative adjustments may be properly grouped or subgrouped with other adjustments and therefore allowed to net against those adjustments in accordance with § 301.6225–1(e) to reduce the amount of the imputed underpayment.

To the extent the comment was suggesting that the modification procedures do not provide the partnership an opportunity to challenge the substance of partnership adjustments, the comment is correct but no change is made in response to the comment. The statutory modification procedures are designed to allow the partnership to modify the amount of the imputed underpayment, not adjust the substance of the partnership adjustments that underlie the imputed underpayment. The substance of partnership adjustments are determined by the IRS on examination, and may be further revised in the IRS Appeals Office (IRS Appeals) or by a court in a proceeding for readjustment brought under section 6234. Although the comment did not explicitly state it as such, to the extent the comment was recommending a rule under § 301.6225–2 that allows a modification to reflect a circumstance where a partner actually took an item into account in a manner consistent with how that item was adjusted by the IRS during the partnership proceeding, this suggestion was adopted. As discussed later in section 3.B.ix. of this preamble, the final regulations under § 301.6225–2(d)(2)(ii) allow a partnership to request modification based on how adjusted items were taken into account by a partner prior to the item being adjusted by the IRS.

The same comment also suggested that the modification procedures permit a partnership to demonstrate how an adjustment would impact its partners and reduce an imputed underpayment without a need for the partners to file an amended return. The other proposed modification procedures provided multiple opportunities for partnerships to demonstrate the impact of adjustments on specific partners. The alternative procedure to filing amended returns is one way in which this type of modification may be achieved. Under § 301.6225–2(d)(2)(x), a partnership may submit on behalf of a partner, in accordance with forms, instructions, and other guidance prescribed by the IRS, all information and payment of any tax, penalties, additions to tax, additional amounts, and interest that would be required to be provided if the partner were filing an amended return. If the partnership avails itself of this procedure with respect to a partner, the partner does not need to also file an amended return in order for modification to be approved. The amended return procedures and the alternative procedure to filing amended returns are discussed further in sections 3.B.iii. and 3.B.iv. of this preamble.

Other modification procedures also provide the partnership with an opportunity to demonstrate the effect of adjustments on specific partners. For instance, tax-exempt modification provides an opportunity for the partnership to demonstrate that partnership adjustments are allocable to a partner that would not owe tax by reason of its status as a tax-exempt entity. Rate modification allows partnerships to demonstrate that partners would be subject to a lower rate than the highest rate of tax applied to calculate the imputed underpayment. Because the partnership has many avenues within modification to demonstrate the effect a partnership adjustment would have on specific partners, no new modification procedures were adopted in response to this comment.

Former proposed § 301.6225–2 permitted a partnership to request modification with respect to an indirect partner (as defined in § 301.6241–1(a)(4)). See, for example, former proposed § 301.6225–2(d)(2). One comment suggested that permitting partnerships to modify their imputed underpayment to account for direct and indirect partners is consistent with the objective of determining an imputed underpayment amount that is as close as possible to the tax due if the partnership and partners had correctly reported and paid. The comment further suggested that permitting modifications for direct and indirect partners would also reduce the disincentives for partnerships to pay the imputed underpayment and recommended the final regulations adopt rules permitting modification with respect to indirect partners, consistent with the proposed regulations.

The final regulations are consistent with the comment's request and adopt the proposed rules allowing modification with respect to indirect partners, provided the indirect partner is a relevant partner as defined in § 301.6225–2(a). The August 2018 NPRM introduced, the term "relevant partner" to describe any person for whom modification is requested by the partnership that is a reviewed year partner, including a pass-through partner, or an indirect partner. The term relevant partner does not include, however, any person that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes. No comments were received regarding the definition of relevant partner. The final regulations maintain the definition of relevant partner from proposed § 301.6225–2(a).

Accordingly, under the final regulations a partnership may request modification with respect to reviewed year partners (direct partners), including pass-through partners, and indirect partners. A partnership may not request modification, however, with respect to a direct or indirect partner that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes.

One comment noted some concerns regarding the interaction between the centralized partnership audit regime and ERISA. The comment expressed concerns about situations in which the partnership representative must decide whether to request a modification that benefits non-ERISA partners over ERISA partners and how that affects the discharge of any fiduciary duties under ERISA. To address these concerns, the comment made three recommendations. First, the comment recommended that the regulations provide that the partnership representative may solicit a vote of the partners in the partnership in determining whether to request a modification. This recommendation was not adopted.

The decision whether to solicit a vote of the partners in the partnership as part of determining whether to request modification or a particular type of modification is fully within the authority of the partnership representative. Nothing in the final regulations prevents or requires the solicitation of a vote by the partnership representative. Additionally, if the partnership and its partners impose such a condition on the partnership representative through an agreement with the partnership representative, any failure to adhere to that agreement does not affect actions taken by the partnership representative. See § 301.6223–2(d).

Second, the comment recommended that the IRS agree to automatically grant a request for an extension of the 270-day period for requesting modification if a vote of the partners whether to request modification has been solicited. This comment was not adopted for the reasons discussed in section 3.B.ii. of this preamble.

Lastly, the comment recommended that the Treasury Department and the IRS share a suggestion with the Department of Labor that the Department of Labor clarify that a partnership representative will not be treated as a fiduciary with respect to any ERISA plan partner if the partnership representative requests or fails to request a modification based on the results of a vote of the partners. The rules regarding who is treated as a fiduciary with respect to any ERISA plan are beyond the scope of these regulations. However, as requested, the comment has been forwarded to the Department of Labor.

Another comment recommended that the IRS revise proposed § 301.6225–2(c)(2)(ii) to limit the required information submitted with any modification request to that specific information relevant to the type of modification requested. The comment noted that requiring extensive and detailed documentation for each modification request will limit the ability of some partnerships to take advantage of the modification procedure. The comment also urged the IRS to establish realistic minimal documentation requirements for any modification request and create additional specific relevant requirements for the various types of modification requests permitted under the proposed regulations. The comment further noted that the ability of the IRS to request supplemental information prior to approval (as provided in proposed § 301.6225–2(c)(4)) will ensure that the IRS obtains documentation they deem necessary for a particular set of facts and circumstances. This comment was adopted.

The final regulations under § 301.6225–2(c)(2)(ii) clarify that the partnership representative must furnish to the IRS information as required by forms, instructions, or other guidance prescribed by the IRS or as is otherwise requested by the IRS. The final regulations provide examples of such information, including the information that was described previously in proposed § 301.6225–2(c)(ii). The information listed in the proposed regulations pertained to items that are necessary to process the majority of modification requests. It is possible, however, that certain items may not be necessary in every case, and if such items are not necessary, or if different items are more appropriate, the IRS will describe the information required in forms, instructions, or other guidance. In this way, the regulations provide the flexibility for the IRS to request what is needed for efficient and effective processing of modification requests, while maintaining the flexibility to adapt information requests in the future.

The final regulations under § 301.6225–2(c)(2)(i) also clarify that, pursuant to section 6241(10), the partnership may be required to submit or file items required to be provided to the IRS under § 301.6225–2 in an electronic format. The form and manner for submission of anything required to be submitted under § 301.6225–2 will be described in forms, instructions, and other guidance prescribed by the IRS. Lastly, the final regulations under § 301.6225–2(c)(2)(i) clarify that the IRS will deny modification not only for the failure to substantiate a modification request but also for the failure to pay anything required under § 301.6225–2.

ii. Timing of Modification

Proposed § 301.6225–2(c)(3) provided rules regarding the time for submitting modification information to the IRS. One comment made three recommendations regarding these rules. First, the comment suggested that the final regulations provide a specified time frame in which the IRS must respond to a request for modification. This suggestion was not adopted because the regulations under section 6235 provide a time frame within which the IRS will respond to a partnership's modification request.

Pursuant to § 301.6235–1(a)(2) and (b), in the case of any modification of an imputed underpayment, no partnership adjustment may be made later than the date that is 270 days after the date on which everything required to be submitted under § 301.6225–2 for modification is so submitted. The date on which everything required to be submitted is so submitted is the date the modification period ends or expires. § 301.6235–1(b)(2). Accordingly, in the case of a modification request, the IRS must generally mail an FPA to make a partnership adjustment within 270 days of the date the modification period ends.

To the extent the comment was requesting a deadline by which the IRS must respond to a request for modification prior to the time limit for making adjustments under section 6235, the comment was not adopted. It is not administrable for the IRS to impose a deadline that would apply in every case that is earlier than the statutory deadline imposed by section 6235. The facts and circumstances of each administrative proceeding, the partnership adjustments made during that proceeding, and the modifications that are requested may differ greatly. Similarly, the complexity of the modification process may range from simple and straight forward to highly complex. Finally, for those modification requests that are more complex or that require additional documentation, the partnership may extend the time period for submitting modifications under § 301.6225–2(c)(3) to allow for additional time and any additional documentation. For the reasons discussed in section 3.B.iii. of this preamble, the IRS plans to adopt procedures under which the IRS will respond to a request for modification in the FPA, including the planned time frame for responses. It is important to tax administration that these procedures are developed in separate guidance to allow for additional flexibility as the IRS gains more experience with the centralized partnership audit regime and the modification process. The 270-day period for mailing an FPA therefore acts as the outside time frame within which the IRS must respond to a request for modification. Because this time frame exists elsewhere in the regulations, the final regulations under

§ 301.6225–2 do not provide a separate time frame for providing a response to a modification request.

The comment also recommended that the final regulations provide that if there is a pending request for modification at the expiration of the 270-day period, the IRS will automatically agree to an extension of that period until at least 30 days after they provide their response. It is not clear from the face of the comment which 270-day period the comment was referring to – the 270-day period under § 301.6225–2(c)(3)(i) in which everything required for modification must be submitted or the 270-day period under § 301.6235–1(b) in which the IRS must mail an FPA to make a partnership adjustment. Both periods may be extended at the request of the partnership or the IRS. See §§ 301.6225–2(c)(3)(ii); 301.6235–1(d).

Regardless of which 270-day period the comment was referring to, the comment was not adopted. The final regulations do not provide that the IRS will automatically agree to an extension of either period under any circumstance. Whether an extension of the time to submit modification information, or an extension of the time to consider such information, is warranted is based on the facts and circumstances. In some cases an extension may be appropriate, for example, where there is a pending request and additional information would help clarify the issues. In other cases an extension may not be appropriate, for example, where it is clear that more information is likely to be of little to no value. Accordingly, while the regulations allow for an extension of both the period to submit modification information and the period in which the IRS has to consider such information, neither extension is automatic but rather must be based on the facts and circumstances of the particular case.

Lastly, the comment suggested the regulations provide a time frame for a partnership to respond to an IRS request for additional information during the IRS's review of a modification request. The comment recommended the time frame for responding be a minimum of 60 days and suggested that this issue is particularly significant if the request occurs near the expiration of the 270-day period. This comment was not adopted, but the IRS plans to adopt procedures that will allow a partnership time to provide additional information, when necessary, with respect to a particular request for modification. Because not all modification requests will require additional information from the partnership, this time frame is not provided for in the regulations. In addition, the response time may depend on the facts and circumstances. For example, as the comment notes, if a request for additional information occurs near the end of the 270-day period to submit information, there might not enough time to allow for a 60-day response period. While it is true the partnership and the IRS may agree to extend the 270-day period, this will not always be the case. Accordingly, a rule establishing a 60-day time frame for responding to requests for additional information in every case is not appropriate and would, in the example noted in the comment, serve as an automatic extension of the 270-day period to submit information that might not be requested by the partnership or consented to by the IRS. Nevertheless, if more information is required from the partnership, the IRS appreciates the need for partnerships to know when that information is due. The IRS plans to establish appropriate procedures through forms, instructions, or other guidance. As a result, the regulations were not revised in response to this comment.

iii. Amended Returns

Proposed § 301.6225–2(d)(2) provided rules regarding modification with respect to amended returns filed by partners. Proposed § 301.6225–2(d)(2)(i) provided that a partnership may request modification of an imputed underpayment based on an amended return filed by a relevant partner provided all of the partnership adjustments properly allocable to such relevant partner are taken into account. One comment recommended that the regulations clarify whether modification will be allowed if a partner files an amended return taking into account adjustments that make up one imputed underpayment, while not taking into account adjustments that make up a separate imputed underpayment which also affects that partner. This comment was not adopted because its recommendation contradicts the statute.

The requirement in proposed § 301.6225–2(d)(2)(i) that partners take into account all partnership adjustments derives from section 6225(c)(2)(A)(ii). Section 6225(c)(2)(A)(ii) states that when partners file amended returns in modification, that return must "take into account all adjustments" under section 6225(a) that are "properly allocable to such partners (and the effect of such adjustments on any tax attributes)." Section 6225(a) refers to "any adjustment by the Secretary to any partnership-related items with respect to any reviewed year of a partnership . . ." Section 6225(c)(2)(A)(ii)'s reference to "all adjustments" under section 6225(a) does not distinguish between partnership adjustments that result in an imputed underpayment and partnership adjustments that do not result in an imputed underpayment. By not distinguishing between the types of partnership adjustments, the language of section 6225(c)(2)(A)(ii) indicates that all partnership adjustments must be taken into account by partners filing modification amended returns, as opposed to only those adjustments that are associated with the imputed underpayment for which modification is requested. Consistent with section 6225(c)(2)(A)(ii), the final regulations under § 301.6225–2(d)(2)(i) require that even in the case of multiple imputed underpayments, partners filing modification amended returns must take into account all partnership adjustments, not just the adjustments associated the imputed underpayment for which modification is requested.

The comment also asked whether there are any specific requirements or limitations that apply in the case of an amended return modification request made with respect to one imputed underpayment, but not with respect to a separate imputed underpayment. Nothing in the regulations imposes specific requirements or limitations on the partnership or its partners when utilizing amended return modification with respect to only one imputed underpayment. The partnership and its partners must comply with all the requirements under § 301.6225–2(d)(2) with respect to any request for amended return modification, including a request made for only one imputed underpayment in the case of multiple imputed underpayments.

Proposed § 301.6225–2(d)(2)(ii)(A) provided that an amended return modification request will not be approved unless the partner filing the amended return has paid all tax, penalties, additions to tax, additional amounts, and interest due as a result of taking into account the adjustments at the time such return is filed with the IRS. One comment suggested that the full payment requirement under § 301.6225–2(d)(2)(ii)(A) should be satisfied if the partner is in compliance with available IRS administrative processes to make full payment, for example, an installment payment agreement. Another comment recommended that the regulations permit partners to submit requests for installment agreements or offers in compromise within the 270-day modification period. These comments were not adopted.

Section 6225(c)(2)(A)(iii) provides that if one or more partners file amended returns during modification, such returns take into account the adjustments properly allocable to such partners, and "payment of any tax due is included with such returns," the imputed underpayment is determined without regard to the adjustments so taken into account. Payment of any tax due is a statutory requirement under section 6225(c)(2)(A)(iii). Consistent with section 6225(c)(2)(A)(iii), proposed § 301.6225–2(d)(2)(ii)(A) required full payment of any tax, penalties, and interest due at the time the amended return is filed with the IRS. If payment is not included with the amended return, the IRS will not approve modification with respect to the amended return.

This rule is necessary to ensure that the IRS collects the entire amount of tax that results from the partner's share of partnership adjustments before approving the partnership's request that the imputed underpayment be calculated without regard to those adjustments. Allowing a partner to enter into an installment agreement undermines the ability of the IRS to collect tax on those adjustments both from the partnership, because the adjustments would no longer be reflected in the imputed underpayment, and from the partner that may ultimately default on the installment agreement. If a partner ultimately does not pay, the IRS may not be able to collect against that partner and likely would be outside the time period within which it must make partnership adjustments, preventing the IRS from collecting any additional imputed underpayment from the partnership. Similar concerns are presented by allowing a partner to enter into an offer in compromise. Moreover, a rule permitting partners to request installment agreements and offers in compromise as alternatives to full payment would increase the administrative burden on the IRS by requiring the IRS to evaluate whether such requests were appropriate, slowing down the modification process in general, and complicating the amended return process specifically. Accordingly, the final regulations retain the rule that full payment of any tax, penalties, and interest due as a result of taking into account the partner's allocable share of adjustments is required in order for modification to be approved with respect to a partner's amended return. In addition, the final regulations under § 301.6225–2(c)(2)(i) clarify that a failure by any person to make any payments required with respect to a modification request within the time restrictions described in § 301.6225–2(c) will result in a denial of a modification request.

Proposed § 301.6225–2(c)(3) provided that all information required under § 301.6225–2 with respect to a request for modification must be submitted on or before 270 days after the date the NOPPA is mailed, unless that period is extended with the permission of the IRS. Several comments recommended partners only be required to file amended returns or make payments on those returns after the issuance of the FPA to allow the court to review the partnership adjustments before modification is requested. One comment recommended that, to provide an adequate amount of time, partners should be allowed at least 270 days from the time of the receipt of an FPA to file amended returns. The comment further recommended that the 270-day period be tolled at any time during which a court proceeding pursuant to section 6234 is ongoing. Another comment recommended that the final regulations commit the IRS to freely grant extensions of the 270-day period and other relevant periods and allow taxpayers to seek modification of the underpayment by filing an amended return, or use the alternative procedure to filing amended returns, within 60 days after there has been a final determination in the partnership case. These comments were not adopted.

First, allowing modification requests, including amended returns, after the FPA is mailed or after there is a court decision with respect to the partnership adjustments is contrary to the statutory scheme under section 6225(c). The statutory scheme under section 6225, section 6231, and section 6235 envision a process where the IRS first mails a NOPPA to the partnership that includes the proposed partnership adjustments and proposed imputed underpayment, followed by a modification period, which is followed by the FPA. The mailing of the NOPPA starts the 270 day period within which anything required to be filed or submitted in the modification process must be filed or submitted to the IRS. After the close of this 270-day period, which may be extended with the consent of the IRS, if modification is requested, the IRS has an additional 270 days to modify the imputed underpayment as necessary to reflect approved modifications and mail the FPA, which will describe the final partnership adjustments and imputed underpayment. After the FPA is issued, there is no basis for the IRS to consider further modifications. The examination is complete and the partnership may then pay the imputed underpayment or elect the push out. The partnership may also challenge the partnership adjustments in court.

Section 6225(c)(2), which provides the procedures for filing amended returns and the alternative procedure to filing amended returns was enacted at the same time as section 6225(c)(7). The amended return modification and the alternative procedure to filing amended returns are just two of many statutory modifications. Had Congress intended for there to be an exception to the 270-day period under section 6225(c)(7) for amended return modification, as suggested by the comments, Congress could have included such an exception when enacting both statutory provisions.

Second, extending the 270-day period beyond the date of the issuance of the FPA could result in several tax administration issues for the IRS. Section

6225(c)(8) provides that any modification of the imputed underpayment amount "shall be made only upon approval of such modification by the Secretary." A request for amended return modification must therefore be approved by the IRS. If the partnership fails to comply with the requirements under the rules under § 301.6225–2, the IRS may decline to approve the request for modification. In order to adopt the comment's suggestion that amended returns and associated payments not be provided until after the FPA is issued, the IRS would need to wait to approve the modification request with respect to that amended return until after the partnership and its partners submitted what was required to be provided under the modification rules. This would prevent the IRS from including its approval or disapproval of the modification request in the FPA, delaying a determination with respect to the modification until some later date. The FPA – the notice of *final* partnership adjustment – is designed to be the final notice to the partnership from IRS, not an interim notice subject to further modifications or changes.

A partnership adjustment is defined under section 6241(2) as an adjustment to a partnership-related item, and a partnership-related item is defined as including an imputed underpayment. An adjustment to an imputed underpayment is, therefore, a partnership adjustment as defined in section 6241(2). The approval of a modification affects the amount of an adjustment that is taken into account in the imputed underpayment under the rules described in § 301.6225–2(b). Therefore, the IRS must approve or disapprove of a modification before the expiration of the time period for making adjustments under section 6235 or the IRS will have lost its opportunity to do so. Relatedly, and in addition to the concern about the statute of limitations, if the IRS waits until after the issuance of the FPA to make further adjustments to the imputed underpayment, modification could extend for an indefinite period of time, which would lead to uncertainty and administrative challenges for the partnership, the partners, and the IRS. This is particularly true with respect any adjustments after the mailing of the FPA because the mailing of the FPA imbues the partnership with certain rights, such as the right to petition a court for a readjustment of the partnership adjustments in the FPA and to elect the push out under section 6226 with respect to the imputed underpayment. The comment does not explain how a rule that would allow the IRS to further alter the imputed underpayment after the partnership has elected push out or petitioned a court for a readjustment would work. Such a rule would raise numerous tax administration concerns and potentially cause confusion for the partnership and its partners as to what the IRS finally determined and when.

In addition, the IRS is limited as to when it may make a partnership adjustment. According to section 6235(a)(2), "no adjustment under this subchapter for any partnership taxable year may be made after . . . in the case of any modification of an imputed underpayment under section 6225(c), the date that is 270 days [including extensions]. . . after the date on which everything required to be submitted to the Secretary pursuant to such section is so submitted." In order to adopt the comment allowing an extension of the 270-day modification submission period beyond the issuance of the FPA, the IRS would be required to issue two FPAs. The first FPA would address the partnership adjustments and the imputed underpayment prior to consideration of modifications. The second FPA would be issued at some later date before the expiration of the period for making adjustments under section 6235. Nothing in section 6235(a)(2) prevents the IRS from mailing a second FPA; however, under section 6231(c), if the partnership petitions the original FPA under section 6234, the Secretary may not mail another notice with respect to the same taxable year in the absence of fraud, malfeasance, or misrepresentation of a material fact. In other words, in the situation contemplated by the comment, in which a partnership petitioned the FPA, in general, the IRS could not issue a second FPA to approve or deny modification issues because the IRS would be prevented from doing so under section 6231(c).

Adopting the comment's suggestion would prevent the IRS from exercising the discretion to approve modification for which Congress provided it authority in section 6225(c)(8). The IRS needs this discretion to ensure that requests for modification are appropriate for the partnership and that the administrative proceeding process is uniform between partnerships. Partners also have other options, such as subsequent amended returns, to address some concerns regarding making payments during the modification process. Accordingly, the regulations have not adopted this comments suggestion.

Proposed § 301.6225–2(d)(2)(vii)(B) provided that if a relevant partner files an amended return for purposes of modification, such partner may not file a subsequent amended return without the permission of the IRS. One comment recommended that the regulations clarify that the restriction in proposed § 301.6225–2(d)(2)(vii)(B) relates to only those items related to a partnership adjustment. Similarly, another comment recommended that the IRS ease the restriction on the ability of a taxpayer using the amended return modification procedure to file subsequent amended returns when the subsequent amended return does not affect the items included in the partnership's audit adjustments. The comment stated that requiring a taxpayer to request permission from the IRS before filing an amended return is an administrative burden in terms of time and resources for both the taxpayer and the IRS.

Another comment recommended that the regulations not prohibit a partner who has amended her return as part of the modification process from amending her return again without the permission of the Service. This comment suggested revising the forms for filing amended returns to (1) include a check-box asking whether the taxpayer filed a prior amended return for that same tax year that was the basis for a modification under section 6225(c) and (2) require any taxpayer who answers in the affirmative to attach to the subsequent amended return an explanatory statement and certain related documents, such as the prior amended return. Another comment recommended the regulations clarify that if a partner filed an amended return and paid tax on its share of adjustments, and modification was approved with respect to the amended return, the partner may later claim a refund of the tax paid if the partnership successfully appeals or contests the adjustment.

The final regulations clarify that the restriction under § 301.6225–2(d)(2)(vii)(B) only applies to subsequent amended returns that change the treatment of partnership adjustments previously taken into account on a prior amended return that was filed during modification or are filed with respect to an imputed underpayment that was taken into account on a prior modification amended return. The final regulations also removed the requirement that limited further amended returns filed with respect to an imputed underpayment. The final regulations provide exceptions to this rule if the modification amended return or all modifications become inapplicable to the reviewed year. For instance, a court could determine after the issuance of the FPA that the IRS's determination was erroneous in whole or in part, and there was no longer an imputed underpayment or the imputed underpayment should be reduced. In that case, the amended returns submitted during modification would have been with respect to an imputed underpayment that either no longer existed or was altered. The modifications in that case would either be wholly or partially inapplicable. Alternatively, during the modification process, after a partner files an amended return for purposes of modification, the IRS could deny modification under § 301.6225–2(c)(2)(i). In those cases, the partner may file a subsequent amended return to reverse the treatment of partnership adjustments taken into account as part of the request for modification that is no longer applicable, subject to the period of limitations under section 6511. In response to the comment, the final regulations also remove the requirement that the partners request permission before filing subsequent amended returns. The final regulations also clarify that the restrictions on amended returns also apply to other claims for refund.

One comment recommended clarification about whether and how the partner can file a request for refund if the IRS denies a modification based on a partner's filing of an amended return and payment of tax (or the use of the alternative procedure to filing amended returns) or if the partnership files a petition in court of the FPA which results in an adjustment in the partnership's favor. The same comment requested clarification on how a taxpayer who has filed an amended return or executed a closing agreement under section 6225 would receive the benefit of the reduced tax liability of the revised adjustment amount. Pursuant to section 7121, a closing agreement approved by the IRS is final and conclusive. Accordingly, as a general rule, a partner may not request a refund of amounts agreed to in, and paid with, a closing agreement, though the determination of whether a partner could file further amended returns or claims for refund with respect to a year in which a closing agreement was executed would depend on the facts and circumstances and the agreed upon terms of the closing agreement. As discussed earlier in this Summary of Comments and Explanation of Revisions, the final regulations under § 301.6225–2(d)(2)(vii) now clarify that partners may file additional amended returns with respect to partnership adjustments or imputed underpayments, including in the case of denied modification or court readjustment. To file a subsequent amended return, the partners must do so in accordance with forms, instructions, and other guidance prescribed by the IRS. A partner that modifies using the alternative procedure to filing amended returns as described in section 6225(c)(2)(B) that seeks a refund for an amount paid as part of those procedures must follow the rules of § 301.6225–2(d)(2)(vii)(B) and (C). There is no separate process for partners that modify using the alternative procedure to amended returns.

Former proposed § 301.6225–2(d)(2)(vii) provided that a pass-through partner may elect, solely for the purposes of modification, to take into account its share of the partnership adjustments and make a payment on behalf of its partners. If modification was approved with respect to the pass-through partner, the partnership was not permitted to request modification based on amended returns filed by upper-tier direct and indirect partners of the pass-through partner. Former proposed § 301.6225–2(d)(2)(vii). One comment suggested that the regulations should permit a modification of a pass-through partner's payment amount based on amended returns filed by its upper-tier owners.

This suggestion was adopted in the August 2018 NPRM revisions to § 301.6225–2(d)(2). Proposed § 301.6225–2(d)(2)(vi)(B), as revised in the August 2018 NPRM, provided that in accordance with forms, instructions, and other guidance, a pass-through partner making a payment under § 301.6225–2(d)(2)(vi)(A) may take into account modifications with respect to its direct and indirect partners to the extent that such modifications are requested by the partnership and approved by the IRS. Therefore, to the extent an upper-tier partner of the pass-through partner has filed an amended return, the partnership has requested modification with respect to that amended return, and the modification is provided, the pass-through partner may take into account that amended return in accordance with forms, instructions, or other guidance when making a payment in modification. The final regulations under § 301.6225–2(d)(2)(vi)(B) retain this rule.

Another comment recommended that the regulations provide more guidance regarding the form required for an amended return filed by a pass-through partner and the information that form will need to contain. This comment was not adopted. The form required for any amended return, including an amended return filed by a pass-through partner, and the information required on that form will be set forth in forms, instructions, and other guidance prescribed by the IRS. Setting forth this information in forms, instructions, and other guidance gives the IRS the flexibility to adapt the form and its contents without having to amend the regulations. This flexibility preserves government resources and expedites the time in which taxpayers will know of changes to the statement requirements. At the same time, the IRS recognizes the need of taxpayers to know of the information required in order to comply with the regulations. The IRS plans to develop and release drafts of forms and instructions for public inspection as they are completed.

Another comment recommended that the regulations address the situation in which a partner files an amended return but incorrectly calculates the interest amount due and subsequently receives an additional assessment from the IRS. The comment expressed concern that the incorrect calculation of interest and resulting shortfall in payment may result in an inadvertent denial of the modification request. Another comment recommended a rule that a de minimis shortfall of interest or penalties resulting from a good faith effort by a taxpayer to calculate the correct amount shall not result in a denial of a modification request.

The comment recommending a good faith de minimis rule to address situations in which a partner has a shortfall of interest or penalties was not adopted. First, allowing a good faith de minimis rule for interest or penalties is inconsistent with the centralized partnership audit regime's approach of allowing modification of the imputed underpayment if partners fully account for adjustments by taking them into account, paying any resulting amounts due as if the partnership and partners had reported correctly the first time. Because amended return modification is occurring years after any tax would have been due as a result of the partnership adjustment, partners with an underpayment must pay interest to compensate the government for the time value of money on the underpayments. Similarly, partners that owe a penalty must pay that penalty to fully take into account the adjustments and allow the partnership the benefit of modification for those adjustments. A de minimis rule that affirmatively blessed some dollar amount or percentage shortfall for either interest or penalties would encourage taxpayers to calculate their interest and penalties to fall within the allowed de minimis range to avoid disallowance but pay less than is required. It is inconsistent with the collection of amounts determined due on examination to systematically allow a collection of less than all that is due.

Second, administering a rule that allowed partners to underpay what is owed under § 301.6225–2(d)(2)(ii)(A) as long as they made a good faith effort and had only a de minimis short fall would result in untenable administrative complexities for the IRS. The IRS must review all modification requests within 270 days after the modification request has been submitted. The IRS will need to quickly ensure that all relevant partners have provided all information and payments necessary to approve modification. A rule that includes a good faith element would require the IRS to engage in a partner-specific inquiry with respect to any shortfall that might be within the de minimis range to determine whether partner made a good faith effort to comply. A rule that looks to the intent of the partner in determining the amount of interest and penalties is factually intense and would require an inquiry into the state of mind of the partner or that partner's tax advisor. In a fraction of the time it would take to make such an inquiry, the IRS could instead request and receive full payment from the partner. Therefore, it is not administrable to inject this additional, burdensome good faith de minimis shortfall rule in the final regulations, when the current requirement of full pay is both more administrable and less burdensome on the IRS and partners.

If the partnership representative becomes aware of the shortfall before expiration of the 270-day period, the partnership representative may request an extension of the 270-day period in order to allow for full payment to be made before the modification period ends. In this way, the partnership representative can take steps to ensure that all requirements under § 301.6225–2(d)(2) were satisfied.

Proposed § 301.6225–2(d)(2)(ii)(C) provided that in the case of a reallocation adjustment, all partners affected by such adjustment must file amended returns in order for the IRS to approve modification with respect to those amended returns. One comment suggested that the partners affected by the reallocation adjustment should be required to file amended returns only if there is evidence of a net underpayment of tax by the partners as a whole. The comment suggested as an alternative that the partners be allowed to attach an explanation or information statement to their adjustment year return rather than filing an amended return for the reviewed year. These suggestions were not adopted.

Section 6225(c)(2)(C) provides that in the case of a reallocation adjustment, amended return modification applies only if all the requirements of either amended return modification or the alternative procedure to filing amended returns "are satisfied with respect to all partners affected by such adjustment." The statute does not provide any exception to this rule, including an exception for situations in which there is evidence of a net underpayment of tax. Accordingly, the final regulations retain the rule that all partners affected by a reallocation adjustment must file amended returns or utilize the alternative to filing amended returns in order for modification to be approved. This rule ensures that all relevant partners affected by the reallocation adjustment take into account their appropriate shares of that adjustment and thereby ensures such partners receive the appropriate tax benefits for the taxable year subject to the adjustment.

Furthermore, payment and collection of an underpayment is not the only issue required to be resolved by the filing of modification amended returns. In some cases, the purpose of the amended returns is to take into account the tax attributes that may have effects on other modification years. Certainly, in some cases, the tax effect of adjustments taken into account in one year may be offset by tax effect of adjustments in another year or by another partner, but as described in section 3.A. of this preamble, the unmodified imputed underpayment is designed by statute to take into account only the reviewed year and it does not take into account the specific tax attributes of any partner or the effects of the partnership adjustments in modification years or intervening years. An unmodified imputed underpayment will often result in an amount that is higher than what the partners collectively would have paid had they taken the adjustments into account properly in the reviewed year. The unmodified imputed underpayment protects the IRS's interests in collecting at least the amount of tax that should have been paid by the partners without having to separately examine and track all the partners. In other words, the unmodified imputed underpayment represents a simple way to allow the partnership to pay, and the IRS to collect, as amount related to the partnership adjustments without having to delve into the specific tax attributes of each partner.

Modification, however, provides an opportunity for the partners and the partnership to demonstrate that specific tax attributes of partners should have an effect on the imputed underpayment. With respect to reallocation adjustments, if partners seek to receive the benefit of modification, each partners subject to a reallocation adjustment must follow the statutory requirement to file amended returns for all adjustments in a reallocation adjustment. It may be the case that one partner pays on modification and another partner is entitled to a refund. However, such a result is unknown until the partners demonstrate that fact through modification. More importantly, section 6225(c)(2)(C) expressly requires that all partners have taken into account all partnership adjustments and related tax attributes for the modification years and future years. This statutory mandate makes clear that the purpose of this modification is not to ensure that there is a net tax payment with respect to the partnership adjustments, but instead to ensure that the proper partners have taken the adjustments into account correctly, including in all modification years. The requirement that all partners affected by a reallocation file amended returns is a necessary condition for modification to be approved.

Similarly, the comment's suggestion that partners attach a statement to their adjustment year returns attesting to the fact that they had a net underpayment as a result of the adjustments is not workable. In an administrative proceeding, the adjustment year is the year in which the FPA is mailed under section 6231 or, if the partnership challenges the adjustments in court, the year such decision becomes final. Section 6225(d)(2). If a partner was one of the partners subject to a reallocation adjustment and failed to file an amended return, none of the other amended returns from other partners subject to the reallocation adjustments could be approved as a modification. As a result, the imputed underpayment would be determined in the FPA without reduction with respect to those adjustments. Attaching a statement on the next filed return of the partner that failed to file an amended return would have no effect on the imputed underpayment already finally determined.

Recognizing the costs and burdens this rule may create for partnerships, partners, and the IRS in cases where it is clear one partner will not owe tax on its share of a reallocation adjustment, the Treasury Department and the IRS included a rule within proposed § 301.6225–2(d)(2)(ii)(C) to mitigate the potential impact of the requirement that all partners file amended returns. Proposed § 301.6225–2(d)(2)(ii)(C) provided that modification may be approved in the case of a reallocation adjustment even if a relevant partner affected by the adjustment does not file an amended return or utilize the alternative procedure provided the partner takes into account its share of the adjustment through other modifications approved by the IRS or if a pass-through partner takes into account the relevant adjustments. For instance, in the case of an adjustment that reallocates a loss from one partner to another, the IRS may determine that the requirements of § 301.6225–2(d)(2)(ii)(C) have been satisfied if one affected relevant partner files an amended return taking into account the adjustment and the other affected relevant partner signs a closing agreement with the IRS taking into account the adjustments. Proposed § 301.6225–2(d)(2)(ii)(C).

One comment recommended that the regulations clarify whether a tax-exempt partner eligible for tax-exempt modification under § 301.6225–2(d)(3) and allocated a share of a reallocation adjustment must file an amended return to satisfy the requirements under § 301.6225–2(d)(2) in order for the IRS to approve a modification request with respect to such partner. The comment recommended adding to the regulations either an explicit statement or an example indicating that such a filing is not necessary provided the IRS is satisfied that the relevant partner qualifies as a tax-exempt entity. This comment was partially adopted by adding a sentence to § 301.6225–2(d)(2)(ii)(C) indicating the IRS may determine the amended return requirement in the context of reallocation adjustment is satisfied to the extent an affected relevant partner meets the requirements of § 301.6225–2(d)(3) regarding tax-exempt partners. The satisfaction of the requirements of § 301.6225–2(d)(2) (amended return modification and the alternative procedure) is only satisfied to the extent of the tax-exempt portion as defined in § 301.6225–2(d)(3)(iii). Therefore, if certain partnership adjustments allocable to tax-exempt partners are subject to tax, and the partner wishes to take advantage of amended return modification, the tax-exempt partner may have to file an amended return to pay tax on the portion of adjustments allocable to that partner which are subject to tax. The final regulations do not add an example to this effect because the plain language of § 301.6225–2(d)(2)(ii)(C) addresses the point raised by the comment.

One comment recommended that the regulations provide an additional modification method in the case of reallocation adjustments that would allow a partner to whom a net negative adjustment is allocated to file an amended return (or use the alternative procedure to filing amended returns) to claim a refund of tax arising from such adjustment, on the condition that the partner to whom the net positive adjustment is allocated, or the partnership, has paid the tax attributable to the net positive adjustment. Similarly, another comment recommended that the regulations permit a modification of an imputed underpayment where only the partner experiencing additional income (or less deduction, loss, or credit) as a result of a reallocation adjustment files an amended return. These comments were not adopted.

As discussed earlier in this section of this preamble, section 6225(c)(2)(C) provides that in the case of a reallocation adjustment, amended return modification applies only if all the requirements of either amended return modification or the alternative procedure to filing amended returns "are satisfied with respect to all partners affected by such adjustment." This rule demonstrates that reallocation adjustments made by the IRS under the centralized partnership audit regime are included in the calculation of the imputed underpayment unless all partners affected by such adjustments take them into account. Section 6225(c)(2)(C) does not contain an exception to the rule that all partners take the adjustments into account. Consistent with section 6225(c)(2)(C)'s requirement that all affected partners take the reallocation adjustments into account, the IRS has exercised its discretionary authority under section 6225(c)(6) to permit modification in the case of a reallocation adjustment where a relevant partner affected by such adjustment has met the requirements of another modification method and that modification has been approved by the IRS. This regulatory exception fits squarely within the statutory framework of ensuring that all partners affected by a partnership adjustment take into account their share of that adjustment and recognize the tax effects of such adjustments. Adopting the approach suggested by the comments, one where either only the loss partner or only the income partner take the adjustments into account, would undercut the statutory framework and directly contradict the plain language of the statute. A rule that does not account for all aspects of a reallocation adjustment would run contrary to the collection mechanism of the centralized partnership audit regime with respect to reallocation adjustments. The statutory framework requires either that the partnership pay an imputed underpayment representing the additional tax effects of the reallocation adjustment in the adjustment year and take the negative adjustment aspects into account in that same year or all affected partners from the reviewed year must fully account for their share of the reallocation adjustment.

One comment recommended that the regulations clarify whether a taxpayer filing an amended return or requesting a closing agreement under section 6225 for purposes of modification is required to take into account and pay any additional taxes due under chapters 2 and 2A of the Code. This comment was adopted. The final regulations clarify that a partner filing an amended return or using the alternative procedure to filing amended returns only is required to pay tax due under chapter 1 of the Code with respect to the amended return and the alternative procedure to filing amended returns. The exception to the limitation of tax to chapter 1 tax is for a pass-through partner filing an amended return under § 301.6225–2(d)(2)(vi) because the pass-through partner, but for § 301.6225–2(d)(2)(vi), might otherwise not owe tax under chapter 1. Nothing in the final regulations limits the IRS's authority under section 6241(9). The type of tax paid in a closing agreement, however, will depend on the terms of the closing agreement. The final regulations clarify the type of tax paid in these situations in §§ 301.6225–2(d)(2)(ii)(A) and (d)(8).

Another comment asked about the effect on the IRS's approval of modification in the case that a partnership or partner fails to pay taxes under chapters 2 and 2A in modification. Because the final regulations clarify that a partner is only required to pay chapter 1 tax in amended return modification or in the alternative procedure to filing amended returns, the failure to pay taxes under chapters 2 and 2A is irrelevant to the approval or denial of modification. The questions asked by the comment are therefore moot, and no changes were made in response to the comment.

Section 6225(c)(2)(D) provides that section 6501 and 6511 shall not apply with respect to returns filed in modification. A comment was concerned that amended returns filed after the expiration of the time period in section 6511 would be automatically rejected by IRS Service Centers, causing confusion and uncertainty about whether the amended return has, in fact been filed, and if so, whether it was timely. The comment recommended that the IRS develop a procedure for the filing of amended returns with the IRS personnel handling the partnership's examination so that this person can make sure that the return is filed and properly processed or alternatively that the regulations directed taxpayers to include a banner on the top of the amended return stating, in red ink, "Filed Pursuant to Section 6225(c)," to alert the Service Center that this amended return should not be automatically rejected if it is otherwise untimely under section 6511. Another comment recommended that the final regulations also require that the reviewed-year partner include in the affidavit filed with the amended return modification request the partner's TIN and contact information to enable the IRS to locate easily the amended return and payment in its databases. The IRS intends to develop a process through which the partners would file their amended returns, but the regulations do not specify the details of that process. The IRS will develop forms and instructions directing the partnership and the partners as to how and where to file their amended returns submitted in modification, and the IRS intends to request the relevant partner's TIN as part of that process.

Prior to the enactment of the TTCA, section 6225(c)(2) stated that section 6511 did not apply with respect to amended return modification, but it was silent on whether section 6501 limitations on assessment applied. If a partner's period under section 6501 was closed at the time of modification, the partner might not be able to participate in amended return modification. One comment recommended that the IRS resolve this issue by allowing partners to extend the relevant section 6501 periods. This comment was received in response to the June 2017 NPRM, prior to the enactment of the TTCA. The TTCA explicitly provided that section 6501 does not apply with respect to returns filed in modification, so the need for such extensions no longer exists.

iv. The Alternative Procedure to Filing Amended Returns

The TTCA created an additional statutory modification under section 6225(c)(2)(B), titled the alternative procedure to filing amended returns (the alternative procedure), which has been referred to as the "pull in" or "push in." Several comments recommended that the Treasury Department and the IRS adopt these procedures in response to the June 2017 NPRM, prior to the enactment of the TTCA. The August 2018 NPRM proposed rules related to the alternative procedure, adopting those comments in response to the enactment of the TTCA, which included the alternative procedure.

One comment suggested that the final regulations should include a modification procedure whereby an imputed underpayment is reduced when the partnership provides sufficient evidence that the adjustments underlying the imputed underpayment would have resulted in a smaller imputed underpayment if they had been taken into account according to how the partners and the partnership actually treated the partnership-related item. The comment described this concept as similar to the "pull-in" procedure included in the TTCA. The comment has not been adopted in its entirety because no one modification provision specifically allows the partnership to demonstrate that the imputed underpayment would be reduced if the partnership and partners had taken the adjustment into account. The purpose of the modification process is not only to reduce the amount of the imputed underpayment, but for those partners that take the adjustments into account as part of the modification requested, they are required to pay any additional tax, interest and penalties due and agree to adjust their tax attributes in exchange for the IRS approving the modification. As such, the regulations contain rules related to the alternative procedure as defined in section 6225(c)(2)(B) and § 301.6225–2(d)(2)(x) and under that procedure the partnership may satisfy the requirements of amended return modification by submitting on behalf of relevant partners, in accordance with forms, instructions, and other guidance prescribed by the IRS, all information and payment of any tax, penalties, additions to tax, additional amounts, and interest that would be required to be provided if the relevant partner were filing a modification amended return. The partnership must also demonstrate that relevant partners have agreed to take into account tax attributes consistent with taking into account the partnership adjustments allocable to that partner. The regulations provide another modification under § 301.6225–2(d)(10), where the IRS will consider any other request for modification and determine whether it is appropriate in the circumstances.

Another comment recommended that the modifying partner using the "push in" procedure deal directly with the IRS exam team during the partnership audit because many partners will not want to provide the details of their financial affairs to the partnership representative or the partnership. The regulations do not provide specific details as to what information will need to be provided to the IRS under the alternative procedure, but the IRS intends to develop such processes. The partnership, not the partners, however, requests amended return modification, and the partnership may satisfy those requirements through the alternative procedure. Because the partnership is responsible for making the modification request, the comment was not adopted at this time. The processes the IRS develops may ultimately provide that the partners submit some information directly to the IRS, but the partners will likely be required to provide some information to the partnership representative to request modification. Nothing in the regulations prevents the partnership from working with third parties or selecting a partnership representative that will not share the details of the partners' financial affairs directly with the partnership. The partnership, the partnership representative, and the partners will ultimately be required to meet filing requirements established in forms, instructions, and other guidance.

The same comment also recommended that partners who establish that they are owed a refund receive such refund through the alternative procedure rather than by filing an amended return or relying on § 301.6225–3, which allows an adjustment that does not result in an imputed underpayment to be taken into account in the adjustment year. The comment recommended that refunds in the alternative procedure context only be allowed after all relevant partners have paid their tax and after the partnership has paid any remaining imputed underpayment. This comment was not adopted. Requests for the alternative procedure under § 301.6225–2(d)(2)(x) are not claims for refunds for the reasons described later in this section of this preamble. To the extent the comment was suggesting that refunds could be claimed after the issuance of the FPA, which is the point after which the partnership would have been able to pay the imputed underpayment, the partners may only do so pursuant to § 301.6225–2(d)(2)(vii).

One comment recommended that if partnerships and their partners will be permitted some simplified method of modification (without the need to file amended returns), the regulations should fully explain that concept. This comment was made prior to the passage of the TTCA and the issuance of the August 2018 NPRM. The preamble to the August 2018 NPRM explains the alternative procedure as enacted by the TTCA. This section of the preamble to these regulations provides additional explanation of the alternative procedure. In addition to the regulations, the alternative procedure will be further described in forms, instructions and other guidance as the IRS processes surrounding the alternative procedure are developed further.

Another comment requested clarification on the interaction of the alternative procedure with other provisions described in the proposed regulations. For instance, the comment stated the language under proposed § 301.6225–2(d)(2)(x) was unclear whether a taxpayer reporting a negative reallocation or recharacterization adjustment is eligible to use the alternative procedure. No changes were made to the regulations in response to this comment.

There is nothing in the regulations that precludes the partnership from requesting modification with respect to a relevant partner under the alternative procedure where the relevant partner would otherwise be entitled to a refund had the partner instead filed amended returns. However, the regulations state that a request for modification under the alternative procedure is not a claim for refund with respect to any person. As a result, a relevant partner may not make a claim for refund via the alternative procedure. This rule is based on the statutory requirement under section 6225(c)(2)(B)(i) that requires a partner to pay any amount due under section 6225(c)(2)(A)(iii) if the partnership requests the alternative procedure. If a partner, after taking into account all partnership adjustments allocable to the partner, would not owe any amount as required in amended return modification under section 6225(c)(2)(A)(iii), the partner is not required to make a payment as part of the alternative procedure. The fact that a partner may utilize the alternative procedure without making a payment does not, however, allow the partner access to a refund through the alternative procedure.

The alternative procedure as described in section 6225(c)(2)(B) does not provide that the partners may obtain refunds. The alternative procedure provides a streamlined process for partners and the partnership generally to those partners paying additional amounts of tax, in lieu of filing amended returns. This streamlined nature of the alternative procedure process also benefits the IRS. By limiting the alternative procedure to just those relevant partners that are making payments required under section 6225(c)(2)(B)(i) (or that owe no additional tax), the IRS should be able to more quickly and efficiently process requests under the alternative procedure. Partners that have been allocated negative adjustments, including reallocation or recharacterization adjustments, may take those adjustments into account using the alternative procedure but by doing so will forego any claim for refund of any amounts related to taking those adjustments into account. In other words, if, for instance, the partner had offsetting income against which the negative adjustment might be netted, the partner could utilize the alternative procedure to make whatever payment resulted from the remaining offsetting income. If the partner would be entitled to a refund as a result of its allocated adjustments, the partner must use the amended return procedures to obtain that refund. Using the amended return procedures allows the IRS to track the refund appropriately and ensure it is processed efficiently.

The same comment also stated that it was unclear if the alternative procedure would trigger the restrictions on further amended returns described in § 301.6225–2(d)(2)(vii)(B). The final regulations under § 301.6225–2(d)(2)(vii)(B) clarify that the restrictions on subsequent amended returns or claims for refund apply equally to the amended return process and the alternative procedure. A subsequent amended return or claim for refund is most likely to occur outside the centralized partnership audit regime process. Because the alternative procedure does not exist outside the centralized partnership audit regime, there is no method by which a partnership could use the alternative procedure to obtain a refund of amounts paid during modification. The partner may file a subsequent amended return, however, if the circumstances described in § 301.6225–2(d)(2)(vii)(C) are met.

v. Rate Modification

Under § 301.6225–2(d)(4), a partnership may request modification based on a lower rate of tax for the reviewed year with respect to adjustments that are allocable to a relevant partner that is a C corporation and adjustments with respect to capital gains or qualified dividends that are allocable to a relevant partner who is an individual. One comment suggested that the rate modification procedures accommodate situations in which the sole adjustment is a recharacterization of capital gain as ordinary income. In that situation, the adjustment increasing ordinary income is a net positive adjustment that results in an imputed underpayment, and the adjustment decreasing capital gain is a net negative adjustment that does not result in an imputed underpayment. See § 301.6225–1.

The comment recommended revising the rate modification procedures to provide that an individual partner may file an amended return, or use the alternative procedure, to establish that the partner previously paid tax on the recharacterized gain at the lower rate with the result that the portion of the net positive adjustment allocable to such partner would be subject to tax only at the difference between the highest tax rate and such lower rate. In addition, the comment recommended that the rate modification procedures allow a corporate partner to demonstrate that it paid tax on capital gain with the result that the portion of the net positive adjustment allocable to the corporate partner would be subject to tax at a zero percent rate, as corporate tax rates on capital gains equal rates on ordinary income.

Rate modification is designed to address situations in which there is an adjustment to a particular type of income that is allocable to an individual or an adjustment that is allocated to a corporate taxpayer. A partnership may demonstrate that a lower rate of tax applies with respect to that income type or based on the type of taxpayer. Section 6225(c)(4)(A) (flush language) limits the rates that may apply by providing that "[i]n no event shall the lower rate determined . . . be less than the highest rate in effect with respect to the income and taxpayer . . .." Proposed § 301.6225–2(d)(4) provided a rule consistent with this statutory mandate. For instance, with respect to an adjustment attributable to a C corporation, the highest rate in effect for the reviewed year with respect to all C corporations would apply to that adjustment, regardless of the rate that would apply to the C corporation based on the amount of that C corporation's taxable income. The comment suggested a rule where the rate applied to the recharacterized income allocable to the C corporation would be 0 percent because there is no reduced capital gains rate for C corporations. Zero is lower than the highest rate applicable to a C corporation and as a result is not permitted by statute. Similarly, for the individual in the comment's suggestion, for taxable year 2018 the highest rate is 37 percent and the highest rate for capital gains is 20 percent. The difference between these two rates is 17 percent, which is lower than the highest rate for capital gains for an individual and as a result not permitted by statute. Accordingly, the comment was not adopted.

In contrast, the amended return (or the alternative procedure to filing amended returns) allows a partner to take into account the partner's share of adjusted items and apply the specific tax rate that applies to the partner's amount of taxable income. When taking into account her share of the adjustments, which includes both the adjustment increasing ordinary income and the adjustment decreasing capital gain, the partner is able to offset additional partnership income with any permissible deductions. For example, a partner may utilize the increase in capital loss to offset the capital gain that was originally reported and subsequently recharacterized, thereby reducing the partner's tax on capital gains to potentially zero and paying tax on her share of ordinary income at the partner's specific effective tax rate.

To the extent the comment was suggesting that the Treasury Department and IRS exercise its discretionary authority under section 6225(c)(6), the Treasury Department and IRS decline to do so because adopting such a rule would present administrability concerns for the IRS. For example, the corporate partner described by the comment may or may not have paid tax on capital gain on the corporate partner's original return; there may have been offsetting capital losses. The most efficient way from a tax administration perspective for the partnership and the corporate partner to demonstrate that the corporate partner previously paid tax on the capital gain is the amended return process (or the alternative procedure). By filing an amended return, the corporate partner can take into account the adjusted amount of both ordinary income and capital loss, and assuming those adjustments could offset on the corporate return, the corporate partner would owe no additional tax and the adjustments taken into account by the corporate partner would be disregarded from the total netted partnership adjustment. See § 301.6225–2(b)(2). An amended return, or an alternative procedure submission, allows the IRS to understand better what the corporation took into account on its original return.

Proposed § 301.6225–2(b)(3) provided rules for calculating an imputed underpayment in the case of a rate modification. The first step in determining an imputed underpayment in the case of a rate modification is to determine each relevant partner's distributive share of the partnership adjustments based on how each adjustment subject to rate modification would be properly allocated under section 702 to such relevant partner in the reviewed year. Proposed § 301.6225–2(b)(3)(iii)(A). In the case of an adjusted item that was specially allocated to a partner or group of partners, however, each relevant partner's distributive share is determined based on the amount of net gain or loss to the partner that would have resulted if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year. Proposed § 301.6225–2(b)(3)(iv).

One comment suggested that the requirement to determine the partner's distributive share based on a hypothetical sale of all partnership assets at fair market value as of the close of the reviewed year is administratively burdensome and difficult for partnerships to apply many years after the calculation date. The comment also suggested that the lack of a definition for fair market value in the statute and in the regulations will generate significant disputes between the IRS and partnerships. In order to simplify the administration of this rule, the comment recommended that the regulations should define fair market value solely for purposes of this rule as a more easily determined amount, such as using section 704(b) basis. This comment was not adopted, although the final regulations do provide an alternative method for determining a partner's distributive share in the case of special allocations as described later in this section of this preamble.

Section 6225(c)(4)(B)(ii) provides if an imputed underpayment is attributable to the adjustment of more than one 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 such partner 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. As discussed later in this section of this Summary of Comments and Explanation of Revisions, the IRS recognizes that there may be concerns about the burden a fair market value analysis might create on both the partnership and the IRS. The Treasury Department and the IRS considered using the authority under section 6225(c)(6) to expand modification to use section 704(b) basis, but the recommendation to use section 704(b) basis is also flawed. Not all partnerships have section 704(b) basis numbers to which the partnership and the IRS could refer for modification purposes. Accordingly, the section 704(b) basis alternative would only be available to certain partnerships, and the IRS would prefer to provide an alternative option to the fair market value analysis that would be available to all partnerships. In addition, there is concern that some partners may not have accurate records for section 704(b) basis. As discussed later in this section of the preamble, the Treasury Department and the IRS did exercise the authority under section 6225(c)(6) to provide an option for special allocation rate modification that would apply to all partnerships.

The comment suggested, as an alternative to defining fair market value, that the regulations permit the partnership to request that adjustments subject to the special allocation rule under § 301.6225–2(b)(3)(iv) be placed in a specific imputed underpayment separate from other adjustments. The comment suggested this process would allow for the adjustments to be allocated solely to the affected relevant partners in the appropriate manner, and also recommended that the request to designate a specific imputed underpayment in this context be considered separately from other modification requests.

The process suggested by the comment was arguably permissible under former proposed § 301.6225–2(d)(6). Under former proposed § 301.6225–2(d)(6), a partnership was permitted to request during modification that one or more partnership adjustments taken into account to calculate one general or specific imputed underpayment be taken into account to calculate a different specific imputed underpayment. Former proposed § 301.6225–1(e)(2)(iii) had defined a specific imputed underpayment as an imputed underpayment with respect to adjustments to an item or items that were allocated to one partner or a group of partners that had the same or similar characteristics or that participated in the same or similar transaction. In the case of a special allocation to a group of partners, however, the partners may not necessarily share the same characteristics or have participated in the same transaction. Accordingly under former proposed § 301.6225–1(e)(2)(iii), certain specially allocated items may have been eligible for placement in a specific imputed underpayment while others may not.

This discrepancy was addressed by the revisions to proposed § 301.6225–1(g)(2)(iii) in the August 2018 NPRM. Proposed § 301.6225–1(g)(2)(iii) provided that the IRS may designate a specific imputed underpayment with respect to adjustments to items that were allocated to a partner or group of partners that had the same or similar characteristics, that participated in the same or similar transaction, "or on such other basis as the IRS determines properly reflects the facts and circumstances." A partnership may request designation of a specific imputed underpayment during the examination or during modification. See § 301.6225–2(d)(6). Accordingly, because the process suggested by the comment is contemplated by the proposed regulations, no change was made in the final regulations to response to this comment.

With respect to the comment's request for an alternative to fair market value, the Treasury Department and the IRS recognize that a determination of fair market value may present challenges for taxpayers and the IRS. For instance, obtaining a fair market value analysis may require the hiring of experts by the taxpayer, thereby increasing the costs of modification. Depending on the type of assets or the amount at issue, the IRS may need to employ its own experts to ensure that the taxpayer's analysis is correct. Recognizing these costs and administrative burdens, the Treasury Department and the IRS have exercised the authority under section 6225(c)(6) to "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 section 6225(c). Pursuant to that authority, the final regulations under § 301.6225–2(b)(3)(iv) allow a partnership requesting rate modifications in the case of special allocations to determine the distributive share for all adjustments to which the lower rate applies with respect to all partners based on the test under either section 6225(c)(4)(B)(i) or section 6225(c)(4)(B)(ii).

The rule under the final regulations allows partnerships and partners to request modification based on what they determine is the most appropriate method to measure partners' distributive shares. This rule provides an alternative to the fair market value analysis for partnerships and partners which comments suggested, and the Treasury Department and the IRS agree, may be too difficult or costly. The rule, however, does not remove the ability of a partnership to request modification based on section 6225(c)(4)(B)(ii). The final regulations also clarify that the distributive share referenced in section 6225(c)(4)(B)(i) is the distributive share as determined in the NOPPA, and if no determination regarding that distributive share was made in the NOPPA, the rules of subchapter K of chapter 1 of the Code (subchapter K).

The same comment also recommended that the regulations clarify that if the IRS requires a partnership to make the deemed sale calculation envisioned in proposed § 301.6225–2(b)(3)(iv), the regulations provide that such action is not considered a revaluation for purposes of section 704. This comment was adopted. A sentence has been added to the final regulations under § 301.6225–2(b)(3)(iv) to make clear that any calculation by the partnership that is necessary for purposes of complying with the rule under § 301.6225–2(b)(3)(iv) is not a revaluation for purposes of section 704.

vi. Certain Passive Losses of Publicly Traded Partnerships

Proposed § 301.6225–2(d)(5) provided rules for modification regarding certain passive activity losses of publicly traded partnerships. Pursuant to proposed § 301.6225–2(d)(5), in the case of a publicly traded partnership that is a relevant partner, an imputed underpayment is determined without regard to the portion of any adjustment the partnership demonstrates would be reduced by a specified passive activity loss which is allocable to a "specified partner." Proposed § 301.6225–2(d)(5)(iii) defined specified partner as a person that is a partner of a publicly traded partnership; that is an individual, estate, trust, closely held C corporation, or personal service corporation; and that has a specific passive activity loss with respect to the publicly traded partnership. One comment recommended that the definition of specified partner include partnerships to accommodate persons that hold an indirect interest in a lower-tier partnership that is under examination through one or more upper-tier partnerships. The final regulations do not adopt this definition of specified partner, but the final regulations do accommodate persons that hold an indirect interest in the partnership under examination.

In the August 2018 NPRM, the Treasury Department and the IRS used the authority under section 6225(c)(6) to create a second type of partner, a qualified relevant partner, that was eligible for modification under § 301.6225–2(d)(5). A qualified relevant partner is a relevant partner that meets the requirements of a specified partner for each year starting with the first affected year through the last year for which a return was filed by the partnership. To address the recommendation made by the comment to accommodate indirect partners, the final regulations provide that an indirect partner may also be a qualified relevant partner, and therefore be eligible for modification under § 301.6225–2(d)(5), if the indirect partner is an individual, estate, trust, closely held C corporation, or personal service corporation and has a specified passive activity loss with respect to the publicly traded partnership.

Former proposed § 301.6225–2(d)(5) had provided that modification for certain passive losses of publicly traded partnerships applied equally with respect to a publicly traded partnership subject to a proceeding under the centralized partnership audit regime and where a portion of the imputed underpayment was attributable to a publicly traded partnership that is a partnership-partner. Proposed § 301.6225–2(d)(5) was revised in the August 2018 NPRM to provide that § 301.6225–2(d)(5) applies in the case of a publicly traded partnership that is a relevant partner. The final regulations provide that modification under § 301.6225–2(d)(5) applies only to the publicly traded partnership requesting modification under § 301.6225–2 (that is, the partnership under examination). This change makes the modification procedures under § 301.6225–2(d)(5) more administrable for the IRS because only the partnership under examination may request modification under § 301.6225–2(d)(5). In this way, the change also makes modification § 301.6225–2(d)(5) consistent with other types of modification. Because the final regulations accommodate certain indirect partners of the publicly traded partnership requesting modification, this change should not substantially affect the number of publicly traded partnerships and partners eligible for modification under § 301.6225–2(d)(5).

Another comment observed that section 6225(c)(5) required certain actions and calculations based on information that would not be known until the adjustment year. Pursuant to section 6225(d), the adjustment year in the case of an administrative proceeding is the year in which a case is fully adjudicated under section 6234, or if no petition is filed under section 6234, when the FPA is mailed. A modification request must be submitted within 270 days of the issuance of the NOPPA, which must be mailed before the FPA. See section 6231(b)(2)(A). As a result of these rules, section 6225(c)(5) does not operate properly in the case of an administrative proceeding. When the partnership submits modification under section 6225(c)(5), the partnership cannot know what the adjustment year is, much less what tax effects there might be in that year. The only circumstance in which section 6225(c)(5) operates properly with respect to the adjustment year is if an AAR has been issued. This is because under section 6225(d) the adjustment year in the case of an AAR is the year in which the AAR is filed.

To address these incongruences, the comment recommended that the regulations allow a publicly traded partnership to reduce an imputed underpayment based on a net decrease in the passive activity loss allocable to a specified partner in the reviewed year to the extent the partnership takes such loss into account in the taxable year immediately preceding the year in which the NOPPA is issued. This comment was not adopted, but the concerns it raises were addressed in the August 2018 NPRM. In the August 2018 NPRM, the Treasury Department and the IRS used the authority under section 6225(c)(6) to provide that the partnership may request modification under § 301.6225–2(d)(5) with respect to the adjustment year or the most recent year for which the publicly traded partnership has filed a return under section 6031.

The Treasury Department and the IRS acknowledge that the most recent year for which a return was filed may not always be the year immediately before the issuance of the NOPPA, as in the rule suggested by the comment. However, using the taxable year for the most recently filed return allows the publicly traded partnership to refer to whatever return is the most recently filed, even if that return was filed shortly after the issuance of the NOPPA. This flexibility allows the partnership to take into account the information known as of the most recent tax year. If the rule were to require the publicly traded partnership to take into account information from a return filed before the issuance of the NOPPA, as suggested by the comment, the return filed before the issuance of the NOPPA might not be the most recent return. For example, the return filed prior to the issuance of the NOPPA could have preceded the NOPPA by several months. After the NOPPA was issued and at the time the partnership is considering submitting a modification request, the partnership could have filed the next year's return reflecting the next year's passive activity losses, which might differ from the losses reported on the return filed prior to the issuance of the NOPPA. The Treasury Department and the IRS have an interest in ensuring that the most current tax amounts are used in determining whether a modification request under § 301.6225–2(d)(5) should be approved. Given this interest, the rule in the final regulations uses the most recently filed return, rather than the comment's suggestion to use the return filed before the issuance of the NOPPA.

In addition, the rule suggested by the comment would require the partnership to know what adjustments would be included in the NOPPA and make adjustments on its return to take such adjustments into account, prior to the issuance of the NOPPA. If the adjustments in the NOPPA somehow differed from the adjustments the partnership took into account on its return, the modification might be denied because the partnership failed to take those adjustments into account. The comment's suggestion, therefore, has its own timing issues. The final regulations provide more flexibility for the partnership to reflect the information known as of the last return filed without requiring the partnership to predict what may or may not be in the NOPPA and on which day the NOPPA will be issued. Accordingly, although the final regulations did not adopt the comment per se, the final regulations adopted an alternative solution to the problem identified by the comment.

The same comment recommended that the final regulations allow a publicly traded partnership to request modification of the imputed underpayment after the end of the adjustment year. Specifically, the comment recommended that the final regulations require the modification request to be submitted within 74 days of the end of the adjustment year, which roughly aligns with the original due date of the partnership tax return. The procedure recommended by the comment is not administrable for the IRS for the same reasons discussed earlier in section 3.B.iii. regarding accepting amended return payments after the issuance of the FPA. Because the FPA is the mechanism through which modification is approved or denied, the modification determination must be made prior to the issuance of the FPA.

The comment stated that any post-FPA modification request would cause the FPA and a denial of the modification request to be subject to judicial review separately. This statement is inaccurate. If the partnership seeks judicial review under section 6234 with respect to an FPA, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the IRS is precluded from mailing another FPA to such partnership with respect to such taxable year. Section 6231(c). Accordingly, if the IRS issued an FPA within the time frames discussed earlier in section 3.B.iii. regarding amended return payments, and the partnership seeks judicial review of that FPA, the IRS would be prevented from issuing a later FPA dealing with the modification request. If the partnership submitted its modification request after the partnership had already received judicial review with respect to the adjustments in the FPA, the IRS generally could not mail an additional FPA approving or denying the modification request, and the partnership would have no determination concerning its modification request which it could challenge in court under section 6234. Accordingly, this comment was not adopted.

The same comment requested that the IRS include the denial of any modification request in the FPA to ensure that any Tax Court proceeding will also address the dispute regarding the requested modification. This comment was not adopted. Whether and how disputes regarding modification requests are subject to judicial review by a court is not within the purview of the Treasury Department's or the IRS's regulatory authority. However, to assist with any potential judicial review of modification, the IRS plans to use the FPA as the method for approving or denying modification. The final regulations do not specify, however, what is required to be included in the FPA for purposes of approving or denying modification. The absence of a regulatory rule in this regard provides the IRS flexibility to allow for the differing circumstances of each administrative proceeding and varying types of modification requests.

The final regulations in § 301.6225–2(d)(5) describe the requirements for modification by publicly traded partnerships under section 6225(c)(5). This section does not require the partnership requesting modification to provide any particular information about partners to the IRS, but the partnership must meet the general requirement to provide all information necessary to approve the modification as described in § 301.6225–2(c)(2). Specifically, § 301.6225–2(c)(2)(i) provides that the IRS may set forth in forms, instructions, and other guidance the information necessary to request modification. One comment requested that the partnership be able to provide summary information with respect to modification under § 301.6225–2(d)(5). The comment specifically suggested that the regulations provide that a partnership can substantiate the availability of specified passive activity losses by providing summary schedules reflecting the specific allocations to each specified partner of the partnership from the year such partner purchased units through the year the partnership receives the FPA.

This comment was received in response to the June 2017 NPRM, prior to the addition of the definition of qualified relevant partner. The definition of qualified relevant partner allows partners to be eligible for modification under § 301.6225–2(d)(5) provided they are partners through the year for which the most recent partnership was filed. For purposes of the comment, however, the Treasury Department and the IRS view this comment as suggesting that the partnership would provide such information for whatever years are relevant for the modification.

The final regulations do not specify what specific information is required for modification under § 301.6225–2(d)(5). Therefore, the regulations do not address whether summary schedules would be appropriate. The IRS intends to issue forms and instructions for modification procedures which will provide additional information on what will be required for modification procedures under § 301.6225–2(d)(5).

Section 301.6225–2(d)(5)(v) requires that the partnership report, in accordance with forms, instructions, and other guidance prescribed by the IRS, to each specified partner or qualified relevant partner the amount of the reduction in suspended passive loss carryovers. One comment suggested that the easiest way to do so is to incorporate such reporting into the Schedules K–1 distributed to such partner at the end of the adjustment year. This comment was received in response to the June 2017 NPRM. Therefore, it could not have taken into account the rule from the August 2018 NPRM that allowed for use of the year of the most recently filed return. The final regulations do not specify the manner in which information must be reported under § 301.6225–2(d)(5)(v). Rather, the regulations defer the manner of reporting to forms and instructions. This provides flexibility to the IRS to gain experience with the forms it intends to develop for purposes of assisting partnerships in complying with the reporting requirements of § 301.6225–2(d)(5)(v) and to change those forms in response to taxpayer feedback, if necessary, without needing to amend the regulations.

In light of the change to allow certain indirect partners to utilize modification under § 301.6225–2(d)(5), the final regulations under § 301.6225–2(d)(5)(v) provide that the IRS may require reporting to an indirect partner that is a qualified relevant partner through forms, instructions, or other guidance. This rule allows the IRS flexibility to evaluate and adapt reporting requirements concerning indirect partners as the IRS and partnerships gain more experience with the centralized partnership audit regime.

vii. Modification Relating to Qualified Investment Entities

Proposed § 301.6225–2(d)(7) provided that a partnership may request a modification of an imputed underpayment based on deficiency dividends distributed as described in section 860(f) by a relevant partner that is a qualified investment entity (QIE) under section 860(b). Under § 301.6225–2(c)(3)(i), the partnership must provide all information required to request modification (including modification for deficiency dividends paid by a QIE partner) on or before 270 days after the issuance of the NOPPA. A partnership may request an extension of this 270-day period, subject to the consent of the IRS. Section 301.6225–2(c)(3)(ii).

Several comments suggested that it is not ideal for a QIE partner to pay a deficiency dividend with respect to an amount or an adjustment that may not be final. The comments were specifically concerned that issues may be unresolved during the 270-day period after the issuance of the NOPPA because of possible review by IRS Appeals. The comments recommended that the IRS grant extensions of the 270-day period under § 301.6225–2(c)(3)(i) as a matter of course until all relevant issues concerning the adjustments have become final.

The IRS plans to adopt procedures under which the partnership will have an opportunity to resolve with IRS Appeals any issues with respect to the adjustments made during the examination prior to the mailing of the NOPPA. Therefore, all issues with respect to the adjustments will generally be resolved at the administrative level prior to the mailing of the NOPPA and the start of the 270-day modification period. Because a request for modification under § 301.6225–2(d)(7) will not be submitted until after the NOPPA has been mailed, the partnership and its QIE partners should know with certainty what adjustments are agreed and which are unagreed at the time of the modification request. This timing will allow the partnership and its QIE partners to evaluate the best method for modification and to determine whether modification under § 301.6225–2(d)(7) is appropriate. Accordingly, a rule requiring the granting of extensions of the 270-day period as a matter of course is not necessary.

Moreover, whether an extension of the modification period is appropriate is a determination best made on the facts and circumstances of a particular case. A rule requiring automatic granting of extensions would deprive the IRS of the ability to evaluation an extension request based on the facts and circumstances. Therefore, the final regulations do not require granting extensions of the 270-day period as a matter of course. Lastly, the regulations provide the IRS with the authority to grant an extension of the 270-day period when warranted, which also protects the partnership in cases that it may be initially unclear whether modification under § 301.6225–2(d)(7) is appropriate.

Another comment suggested that the regulations require payment of a deficiency dividend no later than 60 days after the date the partnership adjustments are finally determined, rather than after the NOPPA is mailed during the 270-day modification period. Another comment recommended that the regulations provide that the allowance of a deficiency dividend be agreed to in advance of a NOPPA, but in the event of a challenge to the underlying substantive adjustment in

IRS Appeals or in court, the allowance does not become effective until final resolution of the underlying challenge. The final regulations do not adopt these suggestions.

First, as discussed earlier in this section of this preamble, the IRS Appeals process that the IRS intends to implement will already have determined which substantive adjustments are agreed to prior to the issuance of the NOPPA. As a result, the most likely avenue for a substantive challenge after modification will be in court and not with IRS Appeals.

Second, pursuant to section 6225(c)(7) and § 301.6225–2(c)(3)(i), everything required to submitted with respect to a modification request must be provided to the IRS within 270 days after the mailing of the NOPPA. The 270-day period is designed to ensure a timely resolution of the audit while also providing the partnership enough of an opportunity to modify an imputed underpayment reflected in a NOPPA. A rule allowing modifications after that 270-day period expires would undermine those goals.

Third, allowing modifications after the adjustments are finally determined precludes the IRS from approving modifications in the FPA. As discussed in section 3.B.ii of this preamble, the IRS plans to adopt procedures under which it will approve or deny each modification request in the FPA. Accordingly, the regulations do not permit modifications to be submitted beyond the 270-day period described in § 301.6225–2(c)(3)(i).

One comment recommended that the regulations clarify that a partnership's receipt of a NOPPA is not a "determination" that begins the 90- or 120-day period for a QIE partner's issuance and claiming of a deficiency dividend deduction under section 860. Section 860(e)(1)-(4) provides that a "determination" means (1) a court decision; (2) a closing agreement; (3) an agreement signed by the Secretary and by the QIE relating to the QIE liability for tax; or (4) a statement by the QIE attached to its amendment or supplement to a tax return. A NOPPA does not fall into any of these four categories. Accordingly, a NOPPA is not a "determination" for purposes of section 860(e). Moreover, § 301.6225–2(d)(7)(ii) requires that the partnership provide documentation of the QIE partner's "determination" described in section 860(e) as part of the partnership's request for modification. This rule makes clear that the determination in this context is the determination with respect to the QIE partner, which does not, by definition, include the NOPPA mailed to the partnership. Accordingly, because section 860(e), when read together with proposed § 301.6225–2(c)(7)(ii), addresses the comment's recommendation, the comment was not adopted.

viii. Closing Agreement Modification

Proposed § 301.6225–2(d)(8) provided that a partnership may request modification based on a closing agreement between the IRS and the partnership or between the IRS and a relevant partner, or both. One comment expressed concern that some partners might not want to negotiate the details of their tax return through the partnership representative and recommended that the regulations outline procedures for partners to work directly with the IRS to enter into closing agreements as part of the partnership audit. Although the IRS may, pursuant to § 301.6223–2(d)(1), allow a person that is not the partnership representative to participate in the examination of the partnership, the IRS is not required to do so. The centralized partnership audit regime is designed to provide for a single, unified proceeding in which the IRS works solely with the partnership representative who has the sole authority to bind the partnership and all its partners. Developing a regulatory procedure that would allow a single partner to work directly with the IRS, without working in conjunction with the partnership representative, during the partnership examination would contravene the regime's central design. The partnership representative may request that the IRS work directly with a partner on a closing agreement or other issues, but it is solely within the IRS's discretion to allow that. See § 301.6223–2(d)(1). Accordingly, this comment was not adopted.

ix. Requests for Additional Modifications

Section 6225(c)(6) provides that 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" for the purposes of section 6225(c). Proposed § 301.6225–2(d)(10) provided that a partnership may request a modification not otherwise described in § 301.6225–2(d), and the IRS will determine whether such modification is accurate and appropriate. Additional types of modifications and the documentation necessary to substantiate such modifications may be set forth in forms, instructions, or other guidance prescribed by the IRS.

Several comments recommended that the Treasury Department and the IRS exercise the authority under section 6225(c)(6) to expand the available types of modifications under proposed § 301.6225–2(d). One comment recommended additional modifications related to foreign partners, including a tax exemption based on section 892 and a reduction in taxes based on eligibility for reduced rates of withholding under a tax treaty. The comment further recommended that these types of modifications and modification for a tax exemption based on foreign status be verified using an expanded version of the existing Forms W–8 and W–9.

Former proposed § 301.6225–2(d)(3) provided rules regarding modifications with respect to adjustments allocable to partners that would not owe tax as a result of their status as a tax-exempt entity. Proposed § 301.6225–2(d)(3)(ii) defined tax-exempt entity to mean a person or entity defined in section 168(h)(2)(A), (C), or (D). A foreign person or entity as defined in section 168(h)(2)(C) includes a foreign government or foreign organization. Accordingly, to the extent an adjustment is allocable to a foreign government or foreign organization, the partnership may request modification with respect to such adjustment provided the requirements of § 301.6225–2(c) and (d)(3) are met.

Proposed § 301.6225–2(d)(9), added in the August 2018 NPRM, provided rules for tax treaty modifications. Under proposed § 301.6225–2(d)(9), a partnership may request modification with respect to a relevant partner's distributive share of an adjustment to a partnership-related item if the relevant partner was a foreign person who would have qualified, under an income tax treaty with the United States, for a reduction or exemption from tax with respect to such partnership-related item in the reviewed year, would have derived the item (within the meaning of § 1.894–1(d)) had it been taken into account properly in the partnership's reviewed year return, and is not otherwise prevented under the income tax treaty with the United States from claiming such reduction or exemption with respect to the reviewed year at the time of the modification request.

No comments were received on the tax treaty modification rules proposed in the August 2018 NPRM. Proposed § 301.6225–2(d)(9) is retained and simplified in the final regulations, with no change in substance. Accordingly, a treaty modification is only available to the extent the relevant partner would have qualified for the treaty benefit at issue, whether a rate reduction or exemption from tax, had the item been taken into account by the partner in the reviewed year. In general, that means a foreign partner may submit a treaty modification only if the partner was, for the reviewed year, a treaty resident; would have derived the item of income through the partnership, or tiers of partnerships, if applicable, under the tax laws of its country of residence; would have been the beneficial owner of the item of income (not a nominee or conduit); would have satisfied the limitation on benefits article under the treaty, if any; and met any other specific requirement for claiming the benefit under the treaty, such as a stock ownership threshold in the case of a claim for a reduced rate of tax on U.S. source dividends.

The final regulations do not address, however, which form will be used for tax treaty modification, or for any type of modification. Prescribing the specific form used for a specific type of modification in the regulations is generally not ideal for either taxpayers or the IRS. The IRS may determine in the future a different form is more appropriate or the form number or name may require revision. Having the flexibility to prescribe the form without needing to change the regulations saves government resources and allows for expedited guidance to taxpayers.

Another comment expressed concern that the determination of the imputed underpayment with respect to adjustments to CFTEs could result in an overpayment of taxes by partners under the centralized partnership audit regime to the extent that one or more partners would be eligible to take an additional foreign tax credit (FTC) as a result of any adjustments made following the conclusion of an audit. The comment recommended that taxpayers should be permitted to claim FTCs for which they are eligible, provided that the taxpayer can provide sufficient evidence to the IRS when claiming the credit. This comment was not adopted.

The modification procedures provide adequate opportunity for a partner to take advantage of any new FTCs. For example, the partners may use amended return modification or the alternative procedure to take into account all adjustments that might affect specific partners, including any new FTCs. Accordingly, no changes were made to the regulations in response to this comment.

Two comments requested that the Treasury Department and the IRS use the authority under section 6225(c)(6) to expand modification and to authorize an "Early Decision" procedure for pushing out audit adjustments in tiered structures in order to address the administrative concerns of the IRS related to a tiered push out. This comment, which was submitted prior to the amendments by the TTCA to section 6226(b) and the August 2018 NPRM, was not adopted. Under the rule proposed in the August 2018 NPRM, adjustments may be pushed out beyond the first tier of partners. See proposed § 301.6226–3(e) and section 4.C.iii. of this preamble for further discussion of the tiered push out rules.

One comment suggested that, to the extent an adjustment amount and the imputed underpayment with respect to that adjustment amount have already been reported and tax paid, modifications should be permitted with respect to the tax amount paid and not be limited only to taxes paid in connection with an amended return. The comment offered two examples which might result in an imputed underpayment being determined on tax that had already been paid. The first example would occur if partners file tax returns with inconsistent positions under section 6222 that reflect the income being adjusted in the examination. The second example presented by the comment is the situation in which two or more people may be deemed by the IRS to have formed a partnership when they have individually reported the income being ascribed to the deemed partnership. This comment was adopted. The final regulations under § 301.6225–2(d)(2)(ii) allow a partnership to satisfy the requirements of amended return modification by demonstrating that a partner previously took into account such partnership adjustments and their effect on tax attributes for all relevant years and made any necessary payments.

Similarly, one comment recommended that modification provide for an alternative to closing agreements that would allow the partnership to demonstrate that a partner's share of an adjustment was partially or fully reversed and so the imputed underpayment should therefore be reduced to give credit for taxes paid in a later year. For instance, the partnership could demonstrate that a former partner would have paid tax on capital gain on its partnership interest and that amount of gain would have, economically included the amount of an adjustment. The partnership would then, pursuant to this recommendation, be permitted to demonstrate that the imputed underpayment should be reduced by a refund in an intervening year.

The same comment also recommended that the final regulations adopt an additional modification type that would allow the partnership to demonstrate the impact of adjustments on one or more of its partners, specifically with respect to interest expense and foreign taxes paid. The comment recommended that the partnership be able to demonstrate that the partner's reporting of these items was not as beneficial as assumed in the calculation of the imputed underpayment.

These comments were received in response to the June 2017 NPRM. The August 2018 NPRM provided rules relating to the alternative procedure and also allowed for amended return modification without regard to sections 6501 and 6511. These additions in the August 2018 NPRM allow for the types of modifications the comment was recommending. For example, under amended return modification as revised in the August 2018

NRPM, a partner files amended returns for the first affected year and other years to the extent tax attributes in those years are affected by taking the adjustments into account. Whether the partner pays additional amounts, demonstrates that on net there is no tax due, or is entitled to a net refund, provided the partner has otherwise complied with the modification requirements, the imputed underpayment will be adjusted to remove that partner's share of the adjustments if the IRS approves the modification. Accordingly, the final regulations do not adopt these comments because the final regulations provide other methods for accomplishing the rules recommended by the comments.

One comment recommended that the final regulations expand modification procedures to allow modification based on closing agreements by and amongst the partnership and the relevant partners entered into in the course of a proceeding with the Competent Authority office, in particular to facilitate the implementation of any mutual agreement by the IRS in a manner that is consistent with the purpose of tax treaties to avoid double taxation. This modification might include mutual agreement procedures but may also include requests for assistance in the context of partner-level foreign tax credits and protective claims. The comment also recommended that the final regulations permit multiple closing agreements and provide procedures for cooperation between the Competent Authority and partnership examination teams. This comment was received in response to the June 2017 NPRM. The August 2018 NPRM provided for treaty modifications that were not in the former proposed regulations, and the final regulations maintain the added treaty modification procedure. The final regulations do not adopt any new modifications that were not previously proposed in the August 2018 NPRM, but maintain the modifications based on closing agreements and treaties. Nothing in the regulations limits the closing agreements in a way that would prevent a closing agreement, or multiple closing agreements, entered into during the Competent Authority process from being considered in the modification process.

C. *Defenses to penalties*

Proposed § 301.6225–2(d)(2)(viii) provided that a relevant partner may raise a partner-level defense (as described in § 301.6226–3(d)(3)) by first paying the penalty, addition to tax, or additional amount with the amended return filed under § 301.6225–2(d)(2) and then filing a claim for refund in accordance with forms, instructions and other guidance. One comment recommended allowing the audited partnership to submit partner-level defenses for both direct and indirect partners as part of the modification process. According to the comment, a review by the IRS prior to requiring payment of the proposed penalties would permit an early determination regarding the validity of any partner-level defense and reduce economic and administrative burdens on taxpayers. The comment suggested that because penalties can represent a large dollar amount, the requirement that taxpayers must provide advance payment of penalties, even in cases where they have a valid penalty defense, can create a significant economic burden on partners. This comment was not adopted.

Due to the limited time the IRS has to review modification requests, the Treasury Department and IRS have determined that reviewing penalty defenses for specific partners in addition to reviewing the amounts taken into account on amended returns or in the alternative procedure submissions is unadministrable in the time frame allowed. The core aspect of the modification procedures is to exclude partnership adjustments from the imputed underpayment calculation. Whether a specific partner is then entitled to a refund of penalties paid after taking the adjustments into account is best determined outside the modification procedures and not subject to the time constraints of section 6225(c)(7) and § 301.6225–2(c). The final regulations, therefore, maintain the requirement that a partner must first pay any penalty due with the amended return filed during modification and then afterward file a claim for refund of the penalty in order to raise a partner-level defense. However, to address the concerns raised by the comment, the final regulations under § 301.6225–2(d)(2)(viii) give the IRS flexibility to develop through future guidance alternative procedures for raising partner-level defenses as the IRS gains more familiarity with the centralized partnership audit regime.

D. *Adjustments that do not result in an imputed underpayment*

Proposed § 301.6225–3 addressed the treatment of adjustments that do not result in an imputed underpayment. Proposed § 301.6225–3 provided that a net negative adjustment resulting from a reallocation adjustment, which does not result in an imputed underpayment pursuant to § 301.6225–1(f), is taken into account by the partnership in the adjustment year as a separately stated item or a non-separately stated item, as required by section 702 and is allocated to adjustment year partners who are also reviewed year partners with respect to whom the amount was reallocated.

One comment expressed concerns with the application of proposed § 301.6225–3(b)(4) to publicly traded partnerships. According to this comment, the public trading of units of publicly traded partnerships depends on their fungibility, which requires that all items affecting the partners' section 704(b) capital accounts be allocated pro rata. The comment suggested that an allocation under proposed § 301.6225–3(b)(4) could force an adjustment year allocation to less than all of the public unit holders, potentially causing the units to be non-fungible. This comment was not adopted at this time, but the final regulations provide that the IRS may provide exceptions to the rule under § 301.6225–3(b)(4) pursuant to forms, instructions, and other guidance prescribed by the IRS. As the IRS gains more experience with the centralized partnership audit regime, the IRS may determine to create an exception through forms, instructions, or other guidance if doing so would benefit taxpayers while fulfilling the requirements of the statute and remaining administrable for the IRS. Having the flexibility to create such an exception through forms, instructions, and other guidance preserves government resources and expedites the process for the IRS to address taxpayer needs and for taxpayers to be aware of changes in IRS procedures.

One comment recommended that the regulations provide examples demonstrating the proper application of proposed § 301.6225–3(b)(4). The final regulations add two such examples under § 301.6225–3(d). One example demonstrates the application of the rule under § 301.6225–3(b)(4) in the context of a recharacterization adjustment the other example demonstrates application of the rule in the context of a reallocation adjustment.

One comment recommended that the rules be clarified regarding whether netting would be allowed with respect to adjustments that do not result in an imputed underpayment in multi-year audits. The comment asks about a particular example: if an audit of 2018 results in an imputed underpayment in 2018 and an overpayment in 2019 in regard to adjustment items, the proposed regulations would not permit those amounts to be netted. As discussed in section 3.A. of this preamble, partnership adjustments with respect to different reviewed years are not netted. If a multi-reviewed-year audit that resulted in an imputed underpayment with respect to one reviewed year and adjustments that do not result in an imputed underpayment with respect to a different reviewed year both had the same adjustment year, then the expense associated with the imputed underpayment paid in the adjustment year is taken into account by the partnership in the adjustment year and the adjustments that do not result in an imputed underpayment would also be taken into account on the adjustment year tax return. Expenses related to payment of an imputed underpayment are nondeductible under section 6241(4). As a result, such items would be taken into account according to subchapter K principles in the adjustment year and the extent to which any items net on the partnership or partners' returns would depend on the particular adjustments and the facts and circumstances of the partnership and partners. Instead, the partnership may also take advantage of modification procedures and the election under section 6226 to allow partnership adjustments to be taken into account directly by the partners that may, depending on the facts and circumstances, allow for different netting results at the partner level.

Lastly, § 301.6225–3(b)(7) was added to provide that partners that previously took into account an adjustment that does not result in an imputed underpayment before a notice of administrative proceeding was mailed by the IRS or before an administrative adjustment request was filed by the partnership do not take into account a second time the same adjustment that does not result in an imputed underpayment. This rule addresses situations where a partner took a position inconsistent with the partnership return as filed and as a result of that inconsistent position previously took into account items that were later determined by the IRS (or by the partnership in an AAR) to be adjustments that do not result in an imputed underpayment, such as additional losses or deductions. The rule is designed to ensure that such partners do not take the same items into account again in the adjustment year.

4. *Election for Alternative to Payment of the Imputed Underpayment*

Twenty-two comments were received concerning section 6226, the election for an alternative to payment of the imputed underpayment. This section of this Summary of Comments and Explanation of Revisions addresses comments concerning the mechanics and effect of making an election under proposed § 301.6226–1; the statements furnished to partners and filed with the IRS pursuant to proposed § 301.6226–2; and the rules regarding how adjustments are taken into account by partners in accordance with proposed § 301.6226–3. Comments concerning basis and tax attribute rules under proposed § 301.6226–4 will be addressed in future guidance.

A. *Mechanics and effect of making an election under section 6226*

The comments received regarding the mechanics and effect of making an election under section 6226 cover six general topics: (1) the time for making the election; (2) revocations of the election; (3) making the election when there are multiple imputed underpayments or there is no imputed underpayment; (4) notification by the IRS that an election is invalid; (5) making the election and filing a petition for readjustment under section 6234; and (6) whether the election should be mandatory.

i. Time for Making the Election Under Section 6226

Under section 6226(a) and proposed § 301.6226–1(c)(3), a partnership may make an election under section 6226 (push out election) within 45 days of the date on which the FPA is mailed by the IRS. This 45-day period cannot be extended, and once made, the election may only be revoked with the consent of the IRS. See proposed § 301.6226–1(c)(1), (3).

Several comments recommended changes to the 45-day period under proposed § 301.6226–1(c)(3). Some comments suggested that the partnership should not be required to make the push out election until after there is a final determination of the partnership adjustments, either as a result of a defaulted FPA or, if a petition is filed, a final court decision. Other comments recommended that the regulations permit, either automatically or upon request, an extension of the 45-day period. These comments were not adopted.

The 45-day period for making an election under section 6226 is established by statute. Pursuant to section 6226(a)(1), section 6225 shall not apply to an imputed underpayment if the partnership "not later than 45 days after the date of the notice of final partnership adjustment" elects the application of section 6226 with respect to such imputed underpayment and furnishes statements to its partners for the reviewed year under section 6226(a)(2). The partners must then take into account the adjustments that resulted in that imputed underpayment. Consistent with section 6226(a)(1), proposed § 301.6226–1(c)(3) provided that an election under § 301.6226–1 must be filed within 45 days of the date the FPA is mailed by the IRS and that the time for filing such an election may not be extended.

Nothing in section 6226 provides for an exception to the 45-day period described in section 6226(a)(1), nor does section 6226 provide that the 45-day period may be extended by the IRS. Accordingly, comments suggesting that the regulations provide that a push out election may be made later than 45 days after the date of the FPA, whether as a general rule or as a result of an extension, were not adopted.

ii. Revocations of Elections under Section 6226

One comment suggested that, as an alternative to delaying or extending the 45-day period for making the push out election, the regulations should provide that the IRS will liberally grant revocations of a push out election in certain circumstances, such as in the case of a settlement of an imputed underpayment. Another comment suggested that the regulations should provide that the IRS will approve any request to revoke an election upon completion of the administrative or judicial proceeding. These comments were not adopted.

Section 6226(a) provides that an election under section 6226, once made, "shall be revocable only with the consent of the Secretary." Consistent with section 6226(a), § 301.6226–1(c)(1) provides that an election under § 301.6226–1 may only be revoked with the consent of the IRS. The requirement that a revocation only be made with the consent of the IRS is mandated by the statute and is critical to the administration of the collection aspect of the push out regime. A push out election relieves the partnership that made the election under section 6226 (audited partnership) from the requirement to pay the imputed underpayment to which the election relates and shifts the collection of any chapter 1 tax resulting from the partnership adjustment to the partners of the partnership. In light of the collection nature of the push out regime, whether a revocation of a push out election should be granted largely depends on the facts and circumstances. For example, a revocation may benefit the IRS, the partnership, and its partners in the case of an agreement by the partnership to pay at the partnership level in lieu of pushing out the adjustments to its partners. On the other hand, a revocation may prejudice the IRS and the partners if, for example, the revocation is granted after statements have already been furnished to the partners. In that case, some partners may have already paid any resulting tax. If the revocation is significantly delayed, some partners may be time-barred from filing refund claims. In turn, any refund claim filed by a partner would require additional processing by the IRS, which could become administratively burdensome particularly in the case of tiered structures. Also, the period to assess the imputed underpayment against the partnership may have expired at the time of the revocation request. Additionally, the audited partnership may no longer be collectible and, if the IRS granted a revocation, the IRS would be required to engage in unnecessary and costly additional collection procedures. Requiring consent of the IRS before a revocation takes effect ensures flexibility to appropriately address each circumstance and protects partners that may have already received pushed out statements. Accordingly, comments recommending liberal or automatic approvals of requests to revoke push out elections were not adopted.

iii. Making the Election when There are Multiple Imputed Underpayments or when There is no Imputed Underpayment

Under proposed § 301.6226–1(a), if an FPA includes more than one imputed underpayment (as described in proposed § 301.6225–1(g)), a partnership may make an election under § 301.6226–1 with respect to one or more of the imputed underpayments identified in the FPA. One comment suggested that the regulations clarify whether there are any requirements for, or limitations on, a partnership's ability to make a push out election for different imputed underpayments. Neither the proposed regulations nor the final regulations under § 301.6226–1(a) contain any restrictions or limitations on a partnership's ability to make an election under section 6226 for a particular imputed underpayment identified in an FPA. For each imputed underpayment for which the partnership plans to make a push out election, the partnership must satisfy the provisions of §§ 301.6226–1 and 301.6226–2, including the requirement under § 301.6226–1(c)(3)(ii)(D) that the election identify the imputed underpayment to which the election relates. Because the regulatory text does not suggest there are any restrictions on making a push out election with respect to different imputed underpayments, the comment seeking further clarification on this point was not adopted.

One comment suggested that a partnership should be allowed to make an election under section 6226 for a taxable year for which there is no imputed underpayment, but for which there is a tax effect favorable to the partnership. The comment described an example in which the IRS determines in an examination of year 1 that the partnership should have reported income originally reported in year 3 ratably over years 1, 2, and 3. In the example, the IRS determines an imputed underpayment with respect to year 1, and the partnership makes a push out election with respect to that imputed underpayment. The comment suggested that a push out election should be permitted for year 3 as well to correct the perceived anomalous result that could occur if the reviewed year partners did not get the benefit of the decrease in income with respect to year 3.

Pursuant to section 6226(a)(1), the partnership may make a push out election "with respect to an imputed underpayment." Section 301.6226–1(a) echoes the statutory language by providing that a partnership may elect under § 301.6226–1 an alternative to the payment by the partnership of "an imputed underpayment." Accordingly, to make a push out election under section 6226(a)(1) and § 301.6226–1, there must be at least one imputed underpayment for the taxable year. To the extent the comment was suggesting an election should be permitted for a year in which there is no imputed underpayment, the comment was not adopted.

As the comment observed, the partnership has other options to make adjustments for year 3. The partnership in the example could file an AAR for year 3, provided the period described in section 6227(c) permitted the filing of an AAR for year 3. See 6227(c) and § 301.6227–1(b). The modification procedures may also provide a mechanism for the partnership and its partners to benefit from the change to year 3. For example, the partners may file amended returns (or utilize the alternative procedure to filing amending returns) to take into account the adjustments to years 1, 2, and 3. See § 301.6225–2(d)(2). See also section 6225(c)(9) (allowing modification of adjustments that do not result in an imputed underpayment). Additionally, nothing in the final regulations prevents the partnership from seeking a closing agreement with the IRS with respect to year 3 subject to rules generally applicable to closing agreements.

iv. Notification that an Election Under Section 6226 is Invalid

Under proposed § 301.6226–1(c)(1), an election under § 301.6226–1 is valid until the IRS determines that the election is invalid. If an election is determined by the IRS to be invalid, the IRS will notify the partnership and the partnership representative within 30 days of such determination and provide the reasons for the determination. See § 301.6226–1(d). Former proposed § 301.6226–1(c)(2) had provided that if the IRS makes a final determination that an election under § 301.6226–1 is invalid, section 6225 applies with respect to the imputed underpayment as if the election were never made and the partnership must pay the imputed underpayment. The word "final" was removed from former proposed § 301.6226–1(c)(2) in the August 2018 NPRM to clarify that the IRS may determine that an election is invalid, and assess and collect the imputed underpayment to which the purported election related, without first being required to make a proposed or initial determination of invalidity. This clarification was adopted in the final regulations under § 301.6226–1(d) (formerly proposed § 301.6226–1(c)(2)). Under § 301.6226–1(d), the IRS may determine an election is invalid without first notifying the partnership or providing the partnership an opportunity to correct any failures to satisfy all of the provisions of § 301.6226–1 and § 301.6226–2, including an opportunity to correct errors in pursuant to § 301.6226–2(d).

One comment suggested that the regulations require the IRS to notify the partnership of its intent to determine that a push out election is invalid and provide the partnership with an opportunity to respond prior to making a final determination that the election is invalid. This comment was not adopted.

An election under section 6226 may be invalid for a number of reasons and not every case will present a need to first communicate with the partnership. For example, the partnership may make an election, but never furnish statements to its partners. Providing the partnership with a preliminary determination that the election is invalid in that case and an additional opportunity to furnish statements would undermine the 60-day period for furnishing statements (see proposed § 301.6226–2(b)), which is designed to support the IRS's timely collection of any additional reporting year tax and provide timely information to reviewed year partners regarding any additional reporting year tax. In such a case, the IRS should have the ability to determine the election is invalid and to immediately assess an imputed underpayment without first notifying the partnership. Accordingly, the comment's suggestion was not adopted. However, while nothing in the regulations requires the IRS to first contact a partnership prior to making a determination that an election under section 6226 is invalid, the IRS intends to develop procedures under which the IRS will first contact partnerships prior to determining a push out election is invalid in certain cases. Those procedures, if adopted, will be set forth in future sub-regulatory guidance.

The same comment also suggested that the partnership should be able to seek review of a decision by the IRS that a push out election is invalid in the United States Tax Court. The United States Tax Court is a court of limited jurisdiction. *See* section 7442. The Treasury Department and the IRS do not have authority to confer jurisdiction on the United States Tax Court. Therefore, this comment was not adopted.

v. Effect of Filing a Petition for Readjustment Under Section 6226

Under proposed § 301.6226–1(e) (§ 301.6226–1(f) in the final regulations), a partnership that has made an election under § 301.6226–1 is not precluded from filing a petition under section 6234(a). Section 6234(a) provides that a partnership may file a petition in the Tax Court, a United States district court, or the Court of Federal Claims, within 90 days of the date on which an FPA is mailed under section 6231. A petition under section 6234 may be filed in a district court or the Court of Federal Claims only if the partnership filing the petition makes a jurisdictional deposit in accordance with section 6234(b). Proposed § 301.6234–1(b) provide that the jurisdictional deposit is the amount of (as of the date of the filing of the petition) any imputed underpayment (as shown on the FPA) and any penalties, additions to tax, and additional amounts with respect to such imputed underpayment.

One comment stated that the proposed regulations provide no explanation as to how or whether the deposit amount under section 6234(b) may or should be adjusted to reflect a push out election under section 6226. The comment recommended the regulations should provide a mechanism that would enable a partnership to file a petition in a district court or Court of Federal Claims and still make an election under section 6226, without creating the risk of having tax on the partnership adjustments paid twice. The comment suggested that one possible approach might be to reduce the deposit amount by the amount that would be reported by partners that receive push out statements. The comment suggested that another possible approach might be to ensure that there is a clear mechanism for the partnership to obtain a refund of the jurisdictional deposit before any amounts are paid under the push out by partners.

Nothing in the proposed regulations limits a partnership's ability to file a petition in a district court or the Court of Federal Claims if the partnership has made an election under section 6226 (provided the partnership has made the jurisdictional deposit required by section 6234(b)). Proposed § 301.6226–1(e) expressly provided that a partnership making the election under § 301.6226–1 is not precluded from filing a petition under section 6234(a) (which includes petitions in the Tax Court as well as petitions in district courts and the Court of Federal Claims). Accordingly, to the extent the comment was seeking clarification that a partnership can both make an election under section 6226 and file a petition under section

6234, the comment was not adopted because the plain language of § 301.6226–1(f) (proposed at § 301.6226–1(e) and renumbered to § 301.6226–1(f)) makes clear that a partnership can take both actions. Accordingly, no changes were made to proposed § 301.6226–1 in response to the comment. To the extent the comment was seeking to make clear that a partnership that makes a valid election under section 6226 with respect to an imputed underpayment is no longer liable for that imputed underpayment, the plain language of section 6226(a) and § 301.6226–1(b)(2) makes clear that is the case. The comment's suggestion regarding the amount of the jurisdictional deposit under section 6234(b) and proposed § 301.6234–1(b) is addressed in section 9 of this Summary of Comments and Explanation of Revisions.

vi. Elective Nature of Section 6226

One comment suggested that the regulations should make the election under section 6226 mandatory, unless provided for otherwise in the partnership agreement, in two circumstances in order to mitigate a partnership representative's potential conflict of interest and to provide protection to partners that are partners in the adjustment year but not partners in the reviewed year. The first circumstance is when the partnership representative is both a partner in the reviewed year and the adjustment year, and the partnership representative's interest during the adjustment year is less than it was in the reviewed year. The second circumstance is when the aggregate partnership interest of any adjustment year partner or group of partners holding a 20 percent or greater interest in the partnership is 20 percent or greater than the interest held by the same partner or group of partners in the reviewed year. Because the approach recommended by the comment is prohibited by statute, the comment's recommendation was not adopted.

Sections 6225 and 6226 provide that the default rule, absent an affirmative election by the partnership, is that the partnership shall pay any imputed underpayment resulting from the partnership adjustments. The regulations cannot switch the default rule from one that imposes partnership liability under section 6225 to one that requires a push out election under section 6226. Additionally, a partnership "elects the application of" section 6226 with respect to an imputed underpayment. Section 6226(a)(1). That election is statutory and, like under any other election under the Code, is a choice by the partnership. It would not be consistent with the elective nature of section 6226 to require the partnership to make a push out election under any circumstance.

vii. Election Must Include Address for Each Reviewed Year Partner

Proposed § 301.6226–1(c) required that an election under § 301.6226–1 must include each reviewed year partner's name, address, and TIN. Under § 301.6226–2(e), each statement furnished by the partnership to a reviewed year partner must include "the current or last address of the reviewed year partner that is known to the partnership." A partnership should use the same standard for determining the address included for each reviewed year partner in the election under § 301.6226–1 as the address included in each statement under § 301.6226–2. Accordingly, the final regulations under § 301.6226–1(c) clarify that an election under § 301.6226–1 must include the "the current or last address of each reviewed year partner that is known to the partnership."

B. *Statements furnished to partners and filed with the IRS*

The comments received regarding furnishing statements to partners and filing the statements with the IRS cover five general areas: (1) the partners to whom the statements are furnished; (2) the timing of when the statements are furnished; (3) reasonable diligence in identifying correct addresses; (4) the effect of failing to properly furnish statements; and (5) the content of the statements.

i. Partners to Whom the Statements are Furnished

Section 6226(a)(2) requires a partnership to furnish statements to "each partner of the partnership for the reviewed year." Consistent with the statute, proposed § 301.6226–2(a) provided that a partnership that makes an election under § 301.6226–1 must furnish to each reviewed year partner a statement reflecting the partner's share of partnership adjustments associated with the imputed underpayment for which the election under § 301.6226–1 was made. A "reviewed year partner" is any person who held an interest in the partnership at any time during the reviewed year. See proposed § 301.6241–1(a)(9). One comment suggested that the partnership should only be required to furnish (or have the option to furnish) statements to partners that would owe additional tax as a result of the partnership adjustments. This comment was not adopted.

The statute does not impose any qualifications or limitations on which partners from the reviewed year must be furnished push out statements. The statute mandates that the partnership furnish a statement "to each partner of the partnership for the reviewed year." Section 6226(a)(2). This statutory requirement is unambiguous and as a result is not being altered in the final regulations.

In addition, the collection mechanism of section 6226 is similar to tax reporting with respect to Schedules K–1, in that the partnership furnishes statements to the partners, and the partners are solely responsible for determining and self-reporting any tax due. Additionally, in most cases, the partnership will not know whether a reviewed year partner will owe additional tax for a particular year as a result of a push out election. Therefore, the partnership could not properly furnish statements without obtaining additional information about each partner's tax situation and determining to a high degree of certainty whether the information provided was accurate. Such an exercise would be burdensome for the partnership, potentially invasive to partners, and pose significant tax administration concerns. Furthermore, such a rule would require the IRS to know which partners would ultimately owe tax as a result of the election to evaluate whether the partnership properly furnished statements. While a partnership may know it is likely that a particular partner will owe additional tax under certain circumstances, crafting a general rule with those partnerships and circumstances in mind would be unfair to partnerships that lack such knowledge or have a means of obtaining it. In contrast, a rule requiring the partnership to furnish a statement to *each* reviewed year partner, regardless of whether that partner might owe tax as a result of the pushed out adjustments, is more administrable for the IRS, less burdensome to partnerships, and required by the statute.

The same comment also recommended that the regulations clarify how adjustments are communicated to reviewed year partners who dispose of their interest in the partnership, including persons who were partners in the reviewed year but not the adjustment year and persons who were only partners in the intervening years (the years after the reviewed year but before the adjustment year). Persons who were only partners in the intervening years are by definition not reviewed year partners, and therefore the partnership is not required to furnish statements to such partners under § 301.6226–2. As a result, partners that were only partners during intervening years are not required to take into account partnership adjustments under § 301.6226–3. Therefore, to the extent the comment was suggesting statements should be furnished to partners from intervening years only, this suggestion was not adopted.

Persons who were reviewed year partners, but who are not partners during the adjustment year or some or all of the intervening years, retain their status as reviewed year partners regardless of when they disposed of their interest. The partnership is required to furnish statements to its reviewed year partners in accordance with § 301.6226–2. Because the proposed regulations clearly required that statements be furnished to all reviewed year partners, no changes were made in response to this comment.

ii. Timing of When the Statements are Furnished

Two comments were received regarding the timing of the statements furnished by a partnership to its reviewed year partners. The first comment suggested that the regulations should provide that a partnership will not be required to furnish statements under proposed § 301.6226–2 until after the partnership has exhausted its rights to challenge the audit adjustments through an administrative or judicial proceeding.

Under proposed § 301.6226–2(b)(1), a partnership that makes an election under § 301.6226–1 must furnish statements to its reviewed year partners (and file those statements with the IRS) no later than 60 days after the date all of the partnership adjustments to which the statement relates are finally determined. Partnership adjustments become finally determined upon the later of the expiration of the time to file a petition under section 6234 or, if a petition under section 6234 is filed, the date when the court's decision becomes final. Proposed § 301.6226–2(b)(1)(i), (ii). Once the time to file a petition has expired, or if a petition is filed, the court's decision has become final, the partnership has exhausted its ability to challenge the partnership adjustments through administrative and judicial avenues. Accordingly, because the plain language of proposed § 301.6226–2(b)(1) reflected the rule suggested by this comment, no changes were made in response to this comment.

The second comment suggested that the due date for the statements under proposed § 301.6226–2 should align with the due date for the partnership's Schedule K–1s and that extensions of the statement due date should be permitted to accommodate the complexity of the calculations necessary for the accurate distribution of the adjustments among the partners. The comment stated that not having the statement due date coincide with the Schedule K–1 due date would create confusion among the partners and likely result in less timely compliance. This comment was not adopted.

Under section 6226(a) and (b), each reviewed year partner that is furnished a statement takes into account the partnership adjustments reflected on that statement by adjusting the partner's chapter 1 tax for the taxable year which includes the date the statement was furnished by the partnership (the reporting year). Therefore, the date the statement is furnished by the audited partnership determines which taxable year a partner (either direct or indirect) will pay tax as a result of taking into account the partnership adjustments (the additional reporting year tax). For example, if a reviewed year partner is furnished a push out statement on March 15, 2022 with respect to reviewed year 2020, the partner must report and pay its additional reporting year tax on the partner's return for the 2022 taxable year, which, for individuals, would be considered timely filed on April 17, 2023 (April 15, 2023 is a Saturday). In contrast, when a partner receives a Schedule K–1, the partner is required to report the items on that Schedule K–1 on the tax return for the taxable year that has just ended. For example, if a partner receives a Schedule K–1 on March 15, 2022 for the 2021 taxable year, the partner must report the items on that Schedule K–1 on the partner's return for the 2021 taxable year, which, for individuals, would be due on April 15, 2022.

These examples illustrate the impediments to aligning the push out statement due date with the Schedule K–1 due date or with providing extensions of the statement due date. First, reviewed year partners who simultaneously receive both a push out statement and a Schedule K–1 may be required to report the items on those statements in different taxable years. While the receipt of tax documents at the same time of year might have some superficial appeal, there is a risk of causing confusion about when and how to take into account the information on those documents. For instance, receiving the push out statement at the same time as the Schedule K–1 could result in a belief by the partner that the partner is supposed to report the amounts on the push out statement in the same year as the items on the Schedule K–1, which would likely be incorrect. In addition, the reviewed year partners, to whom the push out statements must be furnished, may not be the same as the partners for whom Schedule K–1s are required. Therefore, requiring the statements to be furnished at or around the same time may also create confusion for the partnership.

Second, aligning the push out statement due date with the Schedule K–1 due date or allowing extensions would significantly delay the reporting and payment of the additional reporting year tax by reviewed year partners, which is contrary to the interests of sound tax administration. A delay in the reporting and payment of the additional reporting year tax would also increase the amount of interest partners would be liable for under section 6226(c). For example, if a reviewed year partner is furnished a push out statement on March 15, 2022 with respect to reviewed year 2020 under proposed § 301.6226–2 that statement reflects adjustments that were finally determined on or after January 15, 2022 (within the past 60 days). However, if instead the regulations provided that a statement may be furnished by the Schedule K–1 due date for the year in which the adjustments become finally determined (2022), the push out statement would not need to be furnished until March 15, *2023* (assuming no extensions). Under such a rule, the reviewed year partner would not be required to pay the additional reporting year tax until April 15, 2024, a full year after the partner would pay under the proposed regulations. See § 301.6226–3(b).

Accordingly, it is in the interests of sound tax administration to require the push out statements to be furnished expeditiously for all adjustments that are finally determined more than 60 days from the end of the calendar year because the additional reporting year tax is required to be paid with the return for the year in which the statement is furnished. This reporting and payment system also benefits partners by ensuring that reviewed year partners are furnished the push out statement close in time to the final determination of the partnership adjustments, allowing the reviewed year partners to determine any additional reporting year tax, effects on tax attributes, and make payments to stop interest from continuing to run.

For these reasons, the comment recommending alignment of the push out statement due date with the Schedule K–1 due date was not adopted. The recommendation that the push out statement due date be subject to extension also was not adopted for the reasons described in this section of this preamble.

In the case of a tiered structure, however, the comments' recommendation to align the push out statement due date with the Schedule K–1 due date is reflected in § 301.6226–3(e). Under § 301.6226–3(e)(3)(ii), pass-through partners must furnish statements to their affected partners no later than the extended due date for the return for the adjustment year of the audited partnership. This due date aligns the push out statements furnished by pass-through partners with the extended Schedule K–1 due date for the audited partnership, accommodating, in part, the comment's recommendation.

iii. Reasonable Diligence in Identifying Correct Address of Reviewed Year Partner

Under proposed § 301.6226–2(b)(2), a partnership must furnish statements to each reviewed year partner in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership mails the statement, the partnership must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. If a statement is returned as undeliverable, the partnership must undertake reasonable diligence to identify a correct address for the reviewed year partner to which the statement relates. Proposed § 301.6226–2(b)(2).

One comment suggested the final regulations clarify that a master limited partnership (a publicly traded partnership as defined in section 7704) satisfies the reasonable diligence requirement under proposed § 301.6226–2(b) if the partnership utilizes the same procedures it uses for undeliverable Schedule K–1s. According to the comment, a master limited partnership (MLP) normally sends the Schedule K–1 to the address provided to the MLP by the partner's broker; MLPs provide call centers and web-based support that allow partners to directly provide updated contact information to the partnership; and MLPs typically do not attempt to update partners' addresses by using public name and address databases, but will update an address if mail is returned with a forwarding address.

The regulations under the centralized partnership regime are rules of general applicability for all partnerships. The procedure suggested by the comment would be cost-prohibitive for many partnerships. The Treasury Department and the IRS decline to provide a safe harbor in the final regulations solely for partnerships with the means to operate a call center. Additionally, it is not administrable to create special rules for different categories of partnerships as this would result in a multitude of special rules that in some cases may be contradictory and under inclusive. It may also create additional burdens for partnerships that cannot comply with a general rule designed with only a specific type of partnership in mind.

As the IRS gains experience with the centralized partnership audit regime and the push out election in particular, the Treasury Department and the IRS may consider whether further guidance regarding reasonable diligence would be beneficial for partnerships. For purposes of the final regulations, however, the comment's suggestion was not adopted, and the final regulations maintain the rule that the partnership undertake reasonable diligence when a statement is returned undeliverable.

In addition, the final regulations under § 301.6226–2(b)(2) clarify that if after undertaking reasonable diligence the partnership identifies a correct address for the reviewed year partner, the partnership must mail the statement to the reviewed year partner at that correct address.

iv. Effect of Failing to Properly Furnish Statements

Several comments suggested that the regulations clarify the effect of a partnership's failure to properly furnish statements under § 301.6226–2 has on the validity of an election under section 6226. One comment recommended clarification of whether a failure to undertake reasonable diligence under proposed § 301.6226–2(b)(2) with respect to a single partner would make the entire election under section 6226 invalid or only the portion allocable to that specific partner. Similarly, another comment recommended that the regulations clarify that a failure to furnish the statement to one partner would mean the push out election was still effective with respect to the other reviewed year partners, but that the partnership would be liable for the tax attributable to the partner who was not properly furnished a statement.

Pursuant to section 6226(a)(1), an election under section 6226 is made "with respect to an imputed underpayment." Section 6226(a)(2) requires a partnership to furnish statements to "each partner" of the partnership for the reviewed year.

Accordingly, the IRS may invalidate an election under section 6226(a) for any failure to meet the requirements of § 301.6226–1, regarding how an election must be made, or § 301.6226–2, regarding the manner in which statements must be furnished. Because an election under section 6226(a) is "with respect to an imputed underpayment" and not with respect to each specific partnership adjustment that resulted in that imputed underpayment, an election under section 6226 is either valid or invalid with respect to the entire imputed underpayment for which the election was purportedly made.

Nothing in the regulations, however, requires the IRS to determine that a purported election under section 6226 is invalid in situations where the partnership fails to fully comply with § 301.6226–1 or § 301.6226–2. To the contrary, pursuant to § 301.6226–1(c)(1), a push out election is valid unless and until the IRS determines that the election is invalid. Accordingly, if a partnership makes an election under § 301.6226–1 and furnishes statements to 99 out of 100 reviewed year partners, the partnership's push out election is valid unless and until the IRS determines the election is invalid.

Several comments suggested that the regulations provide a safe harbor that would satisfy the requirement to furnish statements to all reviewed year partners. Two comments suggested that the regulations adopt a de minimis rule providing that a failure to deliver a certain number of push out statements, or statements representing a de minimis amount of the pushed out adjustments, would not invalidate a partnership's election under section 6226. One comment recommended that the regulations provide that a partnership's push out election will not be invalidated if the partnership has substantially complied with the regulatory requirements. Another comment suggested that the regulations provide that a partnership will be deemed to have made a valid election under section 6226 if the partnership makes a good faith effort to furnish push out statements to all of its partners. Another comment recommended that the regulations clarify that the obligation to furnish a statement to each reviewed year partner is deemed satisfied if the partnership in good faith furnishes a statement to each partner to whom it was required to send a Schedule K–1 for the reviewed year. These comments were not adopted.

As an initial matter, proposed § 301.6226–2 did not require that the statements be *delivered* in order for the partnership's election under section 6226 to be valid. Rather, proposed § 301.6226–2(b)(2) required the partnership to furnish statements to partners in accordance with forms, instructions, and other guidance; mail the statements to the current or last address of the partner that is known to the partnership, and undertake reasonable diligence to identify a correct address for any returned statement. Compliance with the regulations does not require actual delivery, which is illustrated by proposed § 301.6226–2(b)(3), Example 1.

With respect to the suggestion that the regulations adopt a de minimis, substantial compliance, or good faith rule for failure to properly furnish statements to partners, these suggestions were not adopted. The push out regime is a collection mechanism in lieu of collecting the imputed underpayment from the audited partnership. The benefit to the audited partnership by making a push out election is that the partnership is no longer liable for the imputed underpayment to which the election relates. One of the requirements to obtain this benefit is that the partnership must furnish correct statements to all of the partnership's reviewed year partners. Until the statements have been furnished and the partners determine their additional reporting year tax, the tax implications for each partner as a result of taking into account the pushed out adjustments is uncertain. The additional reporting year tax for each partner may differ greatly, ranging from an increase in tax, a decrease in tax, or no liability at all.

None of the rules suggested by the comments – de minimis safe harbor, substantial compliance, good faith standard – takes into account the asymmetric tax consequences of the pushed out adjustments in the hands of the partners. For instance, a large percentage of adjustments may be allocated to one or a few partners and a failure to furnish statements to this de minimis number of partners would impede the proper collection of a large percentage of additional reporting year tax. Similarly, relatively small numerical adjustments may have significant tax effects on partners. A de minimis rule, whether based on the number of statements or amount of adjustments, would frustrate the collection aspect of section 6226. Additionally, a de minimis rule would present tax administration challenges because a partnership can pick and choose which statements to furnish to which partners, so long as the number of statements furnished or the amount of the pushed out adjustments fell within the de minimis amount. Good faith and substantial compliance rules present the same concerns.

Other provisions in the regulations mitigate against the concerns expressed by the comments. As previously discussed in this section of this preamble, under § 301.6226–2(b)(2) a partnership must send a push out statement to the current or last address of the partner that is known to the partnership. Doing so is generally sufficient for purposes of satisfying the address requirements of § 301.6226–2. Additionally, the general versus specific imputed underpayment rules also mitigate concerns about being unable to properly furnish a statement to a particular partner or group of partners. The partnership may request that the IRS designate a specific imputed underpayment with respect to the adjustments allocable to a partner or group of partners if the partnership has concerns about furnishing a statement to that partner or group of partners. See proposed § 301.6225–2(d)(6). For example, if the partnership lacks current address information for a specific partner, the partnership may request a specific imputed underpayment for that partner's share of the adjustments, pay the specific imputed underpayment, and make a push out election for the general imputed underpayment.

Two comments expressed concerns about situations when the partner no longer exists or is deceased or when the partnership does not have current contact information for a former partner. One of these comments suggested that once a partnership has furnished statements to its partners and to the IRS, the partnership has fulfilled its obligations under section 6226. The other comment specifically stated that neither the partnership nor the remaining partners should have any liability for the imputed underpayment or associated interest and penalties with respect to adjustments allocable to partners that are no longer in existence or who are deceased.

Nothing in the statute or the proposed regulations provides that the partnership or any remaining partners are liable for any amounts that are allocable to reviewed year partners who are no longer in existence or are deceased. Under section 6226(a) and proposed § 301.6226–1, there are only two requirements for a partnership to make an election under section 6226. One, the partnership must make an election under section 6226(a)(1) and § 301.6226–1 within 45 days of the date the FPA is mailed by the IRS. Two, the partnership must furnish statements to each partner from the reviewed year in the time and manner prescribed by § 301.6226–2. The plain language of proposed § 301.6226–1(c)(1) made clear that if a valid election is made under § 301.6226–1, the partnership is not liable for the imputed underpayment to which the election applies. Additionally, under proposed § 301.6226–2(f), only a partner's allocable share of the partnership adjustments are included on the statement furnished to that reviewed year partner. Pursuant to § 301.6226–3, only the adjustments reflected on the statement furnished to the reviewed year partner must be taken into account by that partner. To the extent the comment expressed concern about the partnership lacking a current address for a partner that no longer exists, is deceased or is otherwise a former partner, the proposed regulations provide that the partnership may furnish statements to the last address known to the partnership. Only if the statements are returned as undeliverable is the partnership required to undertake reasonable diligence to ascertain a current address. Accordingly, no revisions to the final regulations were made in response to this comment.

v. Corrections of Errors in Statements

As discussed in section 4.B.iv. of this preamble, several comments expressed concerns about the requirement to furnish statements to all of the partnership's reviewed year partners. Although those comments were not adopted, the ability to correct errors in statements mitigates the potential effects of this rule. Proposed § 301.6226–2(e) provided that the partnership must provide correct information in the statements it furnishes to its partners and files with the IRS. Proposed § 301.6226–2(d)(2)(i) provided that if a partnership discovers an error in a statement within 60 days of the statement due date, the partnership must correct that error, and may do so without IRS consent. If a partnership discovers an error more than 60 days after the statement due date, the partnership may only correct the error after receiving IRS consent. Proposed § 301.6226–2(d)(2)(ii). Additionally, when the IRS discovers an error in a statement, the IRS may require the partnership to correct that error or to provide additional information. Proposed § 301.6226–2(d)(3).

The correction rules under proposed § 301.6226–2(d) were designed to require a partnership that identifies an error in a statement to correct that error expeditiously. Similarly, nothing in the regulations prevents a partner that receives a statement containing an error from alerting the partnership of the error within the 60-day period so that the audited partnership can correct the error. Even if the partnership corrects errors within the 60-day period, however, proposed § 301.6226–1(c)(2) provided the IRS could invalidate the election.

In light of the comments in section 4.B.iv of this preamble regarding the effect on the push out election of failures to furnish correct statements, the Treasury Department and the IRS have revised the rule under proposed § 301.6226–1(c)(2). The 60-day correction period should serve as a period of time after the statements are furnished to verify that the information on the statements was correct and to rectify any errors without adverse consequences regarding the push out election to the partnership or its partners. The ability to correct statements gives the partnership an opportunity to ensure statements were furnished properly and, to the extent a correction can cure the identified defects, to take steps to ensure that an election under section 6226 will not be invalidated. The ability to correct errors also ensures that partners have the correct information when the partners take into account the adjustments reflected on the statements.

Accordingly, the final regulations under § 301.6226–1(d) clarify that the IRS may not invalidate an election based on errors that are timely corrected by the partnership in accordance with § 301.6226–2(d). However, any errors in any statements furnished by the partnership are subject to penalty under section 6722 and the regulations thereunder. See § 301.6226–2(a). In the case of errors discovered by the IRS, the IRS is under no obligation to require the partnership to provide additional information or to correct any errors discovered or brought to the IRS's attention at any time. The IRS may, instead, invalidate the election.

One comment recommended changes to the correction process under § 301.6226–2(d) and the timing of the correction period. Specifically, the comment suggested with respect to errors discovered by a partnership, the partnership should have an automatic obligation and right to issue corrected statements for errors discovered no later than 60 days after the extended due date of the audited partnership's adjustment year return. The comment also suggested that for errors discovered by the partnership after this date, the partnership must notify the IRS, and unless the IRS objects within 90 days of such notification, the partnership must issue the corrected statements. The comment suggested that if the IRS issues a denial within the 90-day period, such denial shall include an explanation for the denial, and the partnership shall have the ability to challenge the decision with IRS Appeals. These suggestions were not adopted.

It is not in the interest of sound tax administration to place a limit on the time the IRS has to consider whether to allow corrected statements after 60 days from the due date of the statements. For example, a partnership may request to make a correction at a time when the period of limitations on assessing additional tax for the affected partners was closed, but the period of limitations for requesting a refund as to other affected partners was still open. If the IRS was unable to process the request to issue corrected statements within 90 days, the corrected statements would be furnished to the partners and those partners would take into account the adjustments. If the IRS determines that the correction of the errors was insufficient, the IRS could determine the partnership's election under section 6226 was invalid, but the period of limitations on assessing the imputed underpayment may have expired by that time. By requiring IRS permission before any corrected statements are furnished, the IRS can evaluate each request based on the facts and circumstances and ensure that any proposed corrections are consistent with the determinations made during the partnership proceeding and would not frustrate the collection of any amounts owed as a result of the partnership proceeding. Requiring IRS permission also incentivizes partnerships to submit correct statements by the due date, which ensures that partners are provided timely and accurate information with which to take into account the adjustments. Because partners may have already taken into account the adjustments, any corrections received by the partners after they have taken into account the adjustments could detrimentally affect those partners.

The same comment also suggested that with respect to errors discovered by the IRS, the IRS may not unreasonably refuse to permit a partnership to issue corrected statements if correction of the error results in a reduced tax liability by the affected partners or to correct the allocation of an adjustment between partners. This comment was not adopted. To extent this comment was suggesting that the regulations require the IRS to require the partnership to correct errors the IRS discovers in these circumstances, the comment was not adopted. The IRS needs discretion to evaluate whether requiring the correction of errors is in the interest of sound tax administration. For example, the errors may be de minimis or the correction of the errors may result in barred assessments or require partners to file amended returns if they have already taken into account the adjustments. To the extent the comment was suggesting that the IRS should not unreasonably withhold consent in situations where the partnership has discovered errors, the comment was also not adopted. As stated earlier in this section of this preamble, the IRS needs the flexibility to evaluate requested changes based on the facts and circumstance of each request.

vi. Contents of the Statements

Under proposed § 301.6226–2(e), each statement described in proposed § 301.6226–2 must include an enumerated list of items, including the partner's name and taxpayer identification number (TIN) and any other information required by forms, instructions, and other guidance prescribed by the IRS. Several comments suggested that the IRS assign a unique control number or other numerical code to a notice of final partnership adjustment and require that all push out statements with respect to an imputed underpayment reflected on that FPA include that control number. The IRS intends to adopt this suggestion by assigning a unique control number to each examination under the centralized partnership audit regime and by using that number for each form, letter, or other document used in the examination as well as any forms or statements utilized for a push out election. The final regulations, however, do not include the audit control number as an enumerated item under § 301.6226–2(e). Requiring the control number through the forms and instructions provides the IRS with the flexibility to gain experience with the use of a unique control number and to make changes, as necessary, without needing to amend the regulations. This flexibility preserves government resources and also expedites the process for taxpayers to be aware of changes in IRS procedures.

C. *Adjustments taken into account by partners*

The comments regarding how adjustments are taken into account by partners covered five general areas: (1) the calculation of the additional reporting year tax; (2) penalties, additions to tax, and additional amounts; (3) pass-through partners; (4) qualified investment entities and master limited partnerships (MLPs); and (5) the examples under proposed § 301.6226–3(h).

i. Calculation of the Additional Reporting Year Tax

Former proposed § 301.6226–3(a) provided that the chapter 1 tax for each reviewed year partner for the reporting year was *increased* by the additional reporting year tax, which was generally defined as the aggregate of the correction amounts determined under former proposed § 301.6226–3(b). Under former proposed § 301.6226–3(b), the aggregate of the correction amounts was determined by adding the amount by which a reviewed year partner's chapter 1 tax would have increased for the first affected year with the amount by which the partner's chapter 1 tax for any intervening year would have increased if the adjustments were taken into account in the first affected year. Because the rule did not account for any decrease in a reviewed year partner's tax for a taxable year, former proposed § 301.6226–3(b)(1) provided that a correction amount for any taxable year could not be less than zero and that any amount less than zero could not reduce any other correction amount.

Section 206(e) of the TTCA amended section 6226(b) to provide that, when a reviewed year partner takes into account the adjustments under section 6226(b), the partner's chapter 1 tax for the reporting year is adjusted by the amounts the partner's chapter 1 tax for the first affected year or any intervening year would increase or decrease if the partner's share of the adjustments were taken into account in the first affected year. The TTCA amendments to section 6226(b) were adopted in the August 2018 NPRM. Proposed § 301.6226–3(b), as revised in the August 2018 NPRM, provided that each reviewed year partner's chapter 1 tax for the reporting year is increased or decreased by the additional reporting year tax, as appropriate. Under proposed § 301.6226–3(b)(2) and (3), the correction amounts are the amounts by which the partner's chapter 1 tax would increase or decrease if the partner's taxable income for that year were recomputed by taking into account the partner's share of the partnership adjustments. Under proposed § 301.6226–3(b)(1), as revised, a correction amount for the first affected year or any intervening year may be less than zero, and any correction amount less than zero may reduce any other correction amount.

The final regulations under § 301.6226–3(b)(1) were further revised to provide that nothing in § 301.6226–3 entitles any partner to a refund of tax imposed by chapter 1 to which such partner is not entitled. This language clarifies that the rules under section 6226 and 6227 are consistent insofar as those rules concern the ability of a partner to claim a refund of an overpayment when taking into account partnership adjustments. See § 301.6227–3(b)(1). Whether an overpayment exists is determined by the Code and existing law outside the scope of these regulations. See section 5.D. of this preamble for further discussion.

Proposed § 301.6226–3(b)(2) and (3) provided that when computing a correction amount for the first affected year or any intervening year, partners should account for the amount of tax shown on an amended return for such year, "including an amended return filed, or alternative to an amended return submitted, under section 6225(c)(2) by a reviewed year partner." The final regulations under § 301.6226–3(b)(2) and (3) remove the language referring to the alternative procedure for filing amended returns under section 6225(c)(2). Amounts assessed based on submissions under the alternative procedure more appropriately fall within the amounts described in § 301.6226–3(b)(2)(ii)(B) and (b)(3)(ii)(B). Accordingly, treating such amounts as akin to amounts shown on amended returns could have led to inaccurate correction amounts. As such, the final regulations under § 301.6226–3(b)(2)(ii)(B) and (b)(3)(ii)(B) have been revised to clarify that the amounts under those provisions include not only the amounts described in § 1.6664–2(d), but also any amounts not included on the return of a partner which are assessed against and collected from the partners. Such amounts include amounts paid as part of modification under § 301.6225–2, including under the alternative procedure or in accordance with a closing agreement. Such amounts do not include, however, any amounts paid with an amended return filed as part of modification because those amounts are included with the amounts shown on a return or amended return under § 301.6226–3(b)(2)(ii)(A) and (b)(3)(ii)(A).

Several comments received prior to the TTCA amendments recommended that the calculation of the additional reporting year tax under former proposed § 301.6226–3(b) be revised to account for potential decreases to a reviewed year partner's chapter 1 tax had the adjustments been taken into account. Certain comments stressed that it was critical for taxpayers to receive symmetrical treatment under section 6226 with respect to adjustments for overpayments or other adjustments that would serve to reduce the additional reporting year tax. One comment suggested that a decrease in tax in one year as a result of the adjustments should be able to reduce the additional tax payable with respect to any other taxable year. One comment specifically recommended that former proposed § 301.6226–3(b) be revised to provide that the correction amount for a partner is the amount by which the reviewed year partner's chapter 1 tax would increase or decrease for the first affected year and all intervening years.

The plain language of section 6226(b), as amended by the TTCA, and proposed § 301.6226–3(a) and (b), as revised in the August 2018 NPRM, make clear that any decreases in tax that result from taking into account the adjustments can produce a correction amount, and in turn an additional reporting year tax, that is less than zero. Accordingly, because the recommendations made by the comments were reflected in the proposed regulations, no changes were necessary in response to those comments.

Another comment recommended that the regulations clarify how information would be communicated to reviewed year partners to calculate a correction amount under section 6226(b)(2)(B) for an intervening year and suggested that partners calculate only the *net* increase in tax in each intervening year. The comment described an example of an adjustment that results from timing differences and recommended that the push out statement include the beneficial effect of deductions, if any, in subsequent years.

Consistent with section 6226(b)(2)(B), proposed § 301.6226–3(b)(3) provided that a correction amount for an intervening year is the amount the partner's chapter 1 tax for such year would increase or decrease after taking into account any adjustments to tax attributes that resulted from taking into account the partnership adjustments in the first affected year. Accordingly, in order to determine an intervening year correction amount, the partner needs to know the partnership adjustments for the reviewed year, which is information provided on the push out statement furnished to the partner. See § 301.6226–2(e). No changes were made to the regulation to respond to the comment's request for clarification on this point. Regarding the comment's suggestion that the correction amount for any intervening year be calculated by reference to the partner's net increase in tax, the rule under § 301.6226–3(b)(3) accommodates this suggestion because it accounts for both increases and decreases that would have occurred in an intervening year. Therefore, no changes were made to the regulations in response to this suggestion.

The comment also recommended that the regulations provide that each partner calculates the correction amounts as though drafting an amended return and that such calculation should be based on generally applicable rules under the Code. The plain language of proposed § 301.6226–3(b)(2) and (3) provided precise rules for calculating the correction amounts. Those rules are consistent with how underpayments and overpayments are generally calculated elsewhere in the Code and regulations and thus provide for the method the comment recommended. See, for example, § 1.6664–2. Forms and instructions will provide additional guidance for partners in computing correction amounts and the additional reporting year tax. Providing this additional guidance through forms and instructions allows for both the IRS and taxpayers to gain experience with those documents and to recommend and to make changes, as necessary and appropriate, without needing to amend the regulations. This informal guidance process preserves government resources and expedites the process by which the IRS can respond to taxpayer needs and by which taxpayers are made aware of changes in IRS procedures. Accordingly, no changes were made to the regulations in response to this comment.

Two comments observed that an audit under the centralized partnership audit regime may be concluded after the statute of limitations for amending partner returns has expired. The comments recommended that the statute of limitations should be automatically extended to allow partners time to file an amended return and claim a refund.

To the extent these comments were concerned about the inability to benefit from any decreases in tax that would have resulted from taking into account the adjustments under section 6226(b), those concerns are addressed by proposed § 301.6226–3(b) as revised in the August 2018 NPRM. As discussed earlier in this section of this preamble, the plain language of § 301.6226–3(b) allows partners to account for increases and decreases that would have resulted in the first affected year or any intervening year were the adjustments taken into account in those years.

To the extent the comment was addressing seeking refunds via amended returns outside the push out process, § 301.6225–2(d)(2) allows for modification of the imputed underpayment via partner amended returns for taxable years for which the period of limitations would otherwise be expired. See section 6225(c)(2)(D). To the extent the comment was seeking a mandatory extension of all partner (direct and indirect) statutes of limitation to file amended returns and claim a refund, it is not in the interests of sound tax administration to provide for automatic extensions where other mechanisms provide adequate remedies for taxpayers. Under both the push out process and the amended return modification procedures, partners may benefit from decreases in tax that result from partnership adjustments. Creating an additional automatic extension process to achieve the same results potentially leads to more administrative burden for the IRS without any tangible benefit for partners. Accordingly, the comments' recommendation for automatic extensions in order to file refund claims was not adopted.

Two comments suggested that the final regulations clarify whether a partner must calculate and pay any additional taxes due under chapters 2 and 2A of the Code when taking into account adjustments under section 6226(b). One comment specifically asked about the application of chapters 2 and 2A in the context of an election by the taxpayer to pay the safe harbor amount. Another comment asked about the consequences of failing to pay chapter 2 or 2A tax if the regulations imposed such a requirement.

First, regarding the comment specific to the safe harbor amount, the safe harbor amount was removed from the regulations in the December 2017 NPRM, no comments were received regarding its removal, and the final regulations do not include a safe harbor amount. Accordingly, inasmuch as this comment was concerned about the safe harbor amount, this comment was not adopted.

Regarding the other comments, section 6226(b)(1) provides that each partner's "tax imposed by chapter 1" shall be adjusted by the aggregate of the correction amounts determined under section 6226(b)(2). Both section 6226(b)(2)(A) and (B) describe the correction amounts as amounts by which the partner's "tax imposed under chapter 1" would increase if the partner's share of the adjustments were taken into account. Consistent with section 6226(b), proposed § 301.6226–3(b) provided that each partner's chapter 1 tax for the reporting year is increased or decreased by the amounts by which the partner's chapter 1 tax would increase or decrease were the adjustments taken into account. The plain language of the statute and the proposed regulations makes clear that a reviewed year partner only increases its chapter 1 reporting year tax by the aggregate of the correction amounts, which are calculated by reference to the amounts by which the partner's chapter 1 tax would increase or decrease for the first affected year or any intervening year. Therefore, no changes were made to § 301.6226–3(b) in response to this comment. Furthermore, because the regulations do not require payment of chapter 2 or 2A taxes when a partner takes into account adjustments under section 6226(b), the consequences of failing to pay those taxes is beyond the scope of the regulations.

ii. Penalties, Additions to Tax, and Additional Amounts

Former proposed § 301.6226–3(a) provided that a reviewed year partner must pay the partner's share of any penalties, additions to tax, or additional amounts determined at the partnership level reflected on the statement furnished to the partner under § 301.6226–2. See former proposed § 301.6226–2(e)(7) and (f)(3). Example 1 in former proposed § 301.6226–3(g) illustrated the application of this rule. In the example, the IRS determines an imputed underpayment and a related accuracy-related penalty in the amount of $32. The partnership elects the application of section 6226 with respect to the imputed underpayment and furnishes a statement to partner A, a 25 percent partner, reflecting A's share of the adjustments and A's share of the $32 penalty amount ($8). The example concludes that A must pay its $8 share of the penalty with its reporting year return.

One comment expressed concern with Example 1 under former proposed § 301.6226–3(g), particularly the result that a partner pays a penalty amount based on the amount of the partnership's imputed underpayment, rather than the amount of the partner's increased tax liability. The comment recommended the regulations clarify that penalties are not measured by reference to the imputed underpayment amount determined at the partnership level.

This comment was addressed by proposed § 301.6226–3(d), as revised in the December 2017 NPRM. As revised, proposed § 301.6226–3(d)(2) provided that a reviewed year partner calculates the amount of any penalty, addition to tax, or additional amount at the partner level by treating a correction amount determined under § 301.6226–3(b) as if it were an underpayment or understatement for the first affected year or intervening year, as applicable. If, after taking into account the partnership adjustments, the reviewed year partner did not have an underpayment, or had an underpayment that fell below the applicable threshold for the imposition of a penalty, no penalty would be due from the reviewed year partner. Proposed § 301.6226–

3(d)(2). Accordingly, the proposed regulations make clear that a partner's penalty is not based on the imputed underpayment amount determined at the partnership level, as recommended by the comment. Example 1 under § 301.6226–3(h) was also revised to account for this rule change.

I. Penalty defenses

Former proposed § 301.6221(a)–1(c) had provided that any defense to any penalty, addition to tax, or additional amount must be raised by the partnership in the partnership-level proceeding, regardless of whether the defense was based on facts and circumstances relating to a person other than the partnership. As discussed in section 1.A of this preamble, former proposed § 301.6221(a)–1(c) was removed from the regulations in the December 2017 NPRM. As part of the revisions in the December 2017 NPRM, the regulations under section 6226 (former proposed § 301.6226–3(i)) were also revised to provide that the calculation of the partner's penalty amount in the case of a push out election is based on the characteristics of, and facts and circumstances applicable to, the reviewed year partner. In addition, a reviewed year partner claiming that a penalty, addition to tax, or additional amount is not due because of a partner-level defense may raise that defense, but must first pay the penalty and file a claim for refund for the reporting year. See proposed § 301.6226–3(d)(3), as revised in the August 2018 NPRM.

One comment recommended that the regulations clarify that a partnership that makes a push-out election will be able to avail itself of partner-level defenses at the partnership level. For the reasons discussed in section 8.A. of this preamble, this comment was not adopted. Under § 301.6233(a)–1(c)(1), a partner-level defense may not be raised in a proceeding of the partnership, including a partnership that makes an election under section 6226, except as otherwise provided in guidance prescribed by the IRS.

Two other comments recommended that the regulations should provide a mechanism for partners to raise partner-level defenses prior to assessment, rather than requiring the partner to first pay the penalty and then file a claim for refund to raise the partner-level defense. One comment specifically suggested that a partner could raise a partner-level defense in the push out context by submitting a statement supporting that defense with the partner's reporting year return. This comment further suggested that the requirement to pre-pay penalties is contrary to the procedures in place for similar scenarios involving amended returns and audit adjustments. These comments were not adopted.

First, to the extent the comment addresses procedures for amended returns and audit adjustments other than partnership adjustments, those procedures are beyond the scope of these regulations. The centralized partnership audit regime is a new set of procedures that does not have an existing parallel in other areas of procedural tax law, and, as such, other scenarios involving amended returns and audit adjustments are not sufficiently similar to provide a relevant baseline against which to determine how the centralized partnership audit procedures should be developed.

Second, under the centralized partnership audit regime, the applicability of penalties, additions to tax, and additional amounts that relate to partnership adjustments is determined at the partnership level. Section 6221(a). A push out statement furnished to a partner under § 301.6226–2 will include any penalties, additions to tax, or additional amounts determined at the partnership level that are applicable to the adjustments pushed out to that partner. The applicability of such penalties, additions to tax, and additional amounts as set forth in the push out statement furnished to the partner are binding on the partner pursuant to section 6223. See § 301.6226–1(e). Therefore, when taking into account the pushed out adjustments, the applicability of any penalties related to those adjustments has already been determined. The imposition and amount of the penalty is determined only upon the partner calculating the additional reporting year tax (or imputed underpayment in the case of pass-through partners) and applying any relevant threshold amounts.

Because the IRS has already determined that a penalty applies, it is contrary to the interests of sound tax administration to allow partners to argue they are not liable for the penalty based on partner-specific reasons without first requiring payment of the penalty. Allowing a partner to raise a partner-level defense without prepaying the penalty would require the IRS to check each reviewed year partner's return to see if a penalty defense was properly raised and open up an examination of the partner to determine the validity of the defense. Such a process would frustrate the collection of the penalties, the applicability of which was already determined at the partnership level in an examination. Requiring pre-payment of penalties before defenses are raised ensures that partners raise only colorable penalty defense claims. For those that do not have such claims, it will ensure immediate collection of the appropriate amount of penalties.

One comment observed that, as a practical matter, it is unclear how a limited partner would dispute penalties determined at the partnership level, particularly because the partner may have no or limited information of actions at the partnership level or control over such actions even if known. The comment recommended clarifying what constitutes reasonable cause or good faith under circumstances that will be common among partnerships with limited partners.

Proposed § 301.6226–3(d)(3) defined partner-level defenses as those defenses that are personal to the reviewed year partner and based on the facts and circumstances applicable to that partner (for example, a reasonable cause and good faith defense under section 6664(c) based on facts specific to a particular partner). Limited partners will have an opportunity to raise defenses specific to their facts and circumstances. The partners (limited partner or otherwise) should have all of the information needed to adequately raise a partner-level defense because that defense is based on the facts and circumstances applicable to the specific partner raising the defense. The partner does not need new information regarding partnership-level actions or control over partnership-level information that the partner did not have access to at the time it took a position on its return reflecting the items from the partnership subject to penalty. The centralized partnership audit regime does not alter the existing law under the Code, regulations, or applicable case law relating to reasonable cause and good faith determinations. Furthermore, as discussed in section 8.A of the preamble, any defense that is based on the conduct or actions of the partnership is a partnership-level defense that must be raised by the partnership during the partnership proceeding. See proposed § 301.6233(a)–1(c)(2)(v).

II. Partnership payment of penalties on behalf of partners

One comment recommended that the partnership have the option of paying penalties at the partnership level while pushing out the partnership adjustments to its partners. The comment noted that pushing out penalties may require long and complex explanations regarding why the penalties apply, which could be burdensome to the partnership, partners, and the IRS, and may cause friction among the partners.

Section 6226(c)(1) provides that any penalties, additions to tax, or additional amounts 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. If the partnership were to pay any penalties, additions to tax, or additional amounts in lieu of pushing out those amounts to its partners, the payment would be a payment towards the liability of the partners, not the partnership. The ability of a person to make a payment towards another's tax liability currently exists outside of the centralized partnership audit regime, and the regime does not alter or affect this ability. The partnership and its partners may enter into a business arrangement whereby the partnership makes a payment towards the partner's penalty liabilities, or whereby the partnership remits an amount to each partner to compensate for any potential penalties, additions to tax, or additional amounts. Nothing in the regulations under § 301.6226–3 would disturb those types of arrangements.

At the same time, the regulations do not provide a specific method for making such payments. Creating and monitoring a separate system to allow for partnerships to pay penalties on behalf of its partners would be burdensome for the IRS, partnerships, and partners. As discussed earlier in this section of the preamble, under proposed § 301.6226–3(d)(2) a partner's penalty amount is calculated based on the facts and circumstances unique to each partner. For the partnership to fully pay the amount of penalties owed by its partners, the partnership would need to obtain detailed information about each partner's personal tax situation, which is burdensome for the partnership and potentially invasive to the partners. This information would also have to be transmitted to the IRS to verify the correct penalty amount was paid and reflected in each partner's account. For these reasons, this comment was not adopted.

Another comment similarly suggested that the IRS create a process by which the partnership could pay both interest and penalties on behalf of its foreign partners so that those foreign partners would not need to obtain a TIN to file a U.S. tax return to report and pay interest and penalties. The comment suggested that the IRS could require, as part of that process, the partnership to obtain documentation from the foreign partner authorizing the partnership to make the payment on the foreign partner's behalf. The comment also recommended that the regulations make clear such a payment would not preclude the partnership from making a push out election with respect to the adjustments. This comment was not adopted.

As discussed earlier in this section of this preamble, there are administrative difficulties involved with adopting a specific method for a partnership to determine and pay over to the IRS its partners' amounts of penalties and interest. Further, because penalties and interest are determined at the partner level, a partnership will generally not be able to pay the exact amount of penalties and interest due with respect to each foreign partner. Therefore, there would be no basis for waiving the filing requirement for a foreign partner under these circumstances, even in cases in which the partnership is able to satisfy the tax due at source. For these reasons, the comment's suggestion was not adopted and no changes were made to the regulations in response to the comment.

III. Interest on penalties, additions to tax, and additional amounts

Section 6226(c)(2) provides that in the case of a push out election, interest shall be determined at the partner level from the due date of the return for the taxable year to which the increase in chapter 1 tax is attributable. Proposed § 301.6226–3(c)(1) provided that interest on each correction amount greater than zero is calculated from the due date (without extension) of the reviewed year partner's return for the applicable taxable year until the amount is paid. For purposes of calculating interest on any penalties, additions to tax, or additional amounts, proposed § 301.6226–3(c)(2) similarly provided that such interest is calculated from the due date (without extension) of the reviewed year partner's return for the applicable taxable year until the amount is paid.

One comment observed that section 6226(c)(2) is silent as to whether the due date of the return for the purpose of calculating interest is determined with or without regard to any extension of time for filing, and noted that the statute does not differentiate between interest on tax and interest on penalties and additions to tax. The comment recommended the regulations adopt a bifurcated approach under which interest would run on the correction amounts from the due date of the return without regard to extensions while interest on penalties would run from the due date of the return including any extensions. The comment observed a similar bifurcated approach exists for calculating interest on tax and certain penalties outside the partnership context.

After consideration, the Treasury Department and the IRS have adopted this comment to be consistent with the method of calculating interest on penalties outside of the centralized partnership audit regime pursuant to section 6601(e)(2)(B). Accordingly, § 301.6226–3(c)(2) now provides that interest on any penalties, additions to tax, or additional amounts is calculated from the due date (including any extension) of the reviewed year partner's return for the applicable tax year until the amount is paid.

IV. Interest on the additional reporting year tax

Section 6226(c)(2) provides that interest in the case of a section 6226 election is determined at the partner level, from the due date of the return for the taxable year to which the increase in chapter 1 tax is attributable, and at the underpayment rate under section 6621(a)(2) (substituting 5 percent for 3 percent). As explained in section 4.A of the preamble to the August 2018 NPRM, while the TTCA amended section 6226(b) to provide that both increases and decreases in chapter 1 tax are used in computing a partner's additional reporting year tax, the TTCA did not similarly amend the reference to "increases" in section 6226(c)(2). The result of the changes to section 6226 is that interest only applies to the increases in the chapter 1 tax that would have resulted from taking into account the partnership adjustments under section 6226. No provision under the centralized partnership audit regime provides for interest on a *decrease* in chapter 1 tax that would have resulted in the first affected year or any intervening year if the adjustments were taken into account in those years. Accordingly, proposed § 301.6226–3(c)(1) provided that interest on the correction amounts determined under proposed § 301.6226–3(b) is only calculated for taxable years for which there is a correction amount greater than zero, that is, taxable years for which there would have been an increase in chapter 1 tax if the adjustments were taken into account.

One comment suggested that the final regulations clarify that the IRS will pay interest on any refunds issued on prior overpayments resulting from a taxpayer's statements filed under section 6226 with their reporting year return. The comment expressed the belief that the rule under section 6226(c)(2) is only intended to increase the normal statutory rate of interest imposed, not to exclude interest on overpayments.

The additional reporting year tax is calculated under section 6226(b)(2) by reference to the amount that a partner's chapter 1 tax "would" increase or decrease if the partner's share of adjustments "were taken into account" in the first affected year or in the case of an intervening year, the amount by which such tax would increase or decrease by reason of the adjustment to tax attributes. An adjustment to a tax attribute is any tax attribute which "would have been affected" if the adjustments "were taken into account" in the first affected year. Under the language of section 6226(b)(2) and (3), adjustments are not actually taken into account like they would be if an amended return was filed under § 301.6225–2(d)(2). Similarly, the increases or decreases do not actually occur as they would in the amended return context and tax attributes are not actually adjusted as part of this calculation. Accordingly, in the case of an increase in tax that would result in the first affected year or any intervening year if the adjustments were taken into account, no overpayment results for any year because there is an increase in tax, not a decrease. In the case of a decrease in tax that would result in the first affected year or any intervening year if the adjustments were taken into account, there is no overpayment because the determination of a decrease in tax is merely by reference to the relevant year to be taken into account as part of the total additional reporting year tax. Therefore, no overpayment interest is due and owing to the partner.

iii. Pass-through Partners

The June 2017 NPRM reserved on the issue of how a pass-through partner takes into account its share of adjustments reflected on a statement furnished to the pass-through partner under § 301.6226–2. In response to the June 2017 NPRM, multiple comments recommended that pass-through partners take into account adjustments by pushing out those adjustments to the next tier of partners and suggested approaches to achieve this result.

After careful consideration of those comments, the December 2017 NPRM adopted an approach that required a pass-through partner to take into account adjustments reflected on a push out statement by either furnishing statements to its own partners or by paying an amount calculated like an imputed underpayment with respect to the adjustments, plus any applicable penalties and interest. See former proposed § 301.6226–3(e)(1). The regulations created an iterative process under which any pass-through partner receiving a statement from another pass-through partner must also take into account the adjustments on the statement by furnishing statements to its own partners or paying an amount calculated like an imputed underpayment. Any ultimate, non-pass-through partner was required to take into account its share of the adjustments as if such partner was a reviewed year non-pass-through partner. If a pass-through partner failed to take into account the adjustments in accordance with former proposed § 301.6226–3(e)(1), the pass-through partner was required to pay an amount calculated like an imputed underpayment plus any applicable penalties and interest.

Section 204(a) of the TTCA added to the Code section 6226(b)(4), which provides that a partnership or S corporation that receives a statement under section 6226(a)(2) must file a partnership adjustment tracking report with the IRS and furnish statements under rules similar to the rules of section 6226(a)(2). If the partnership or S corporation fails to furnish such statements, the partnership or S corporation must compute and pay an imputed underpayment under rules similar to the rules of section 6225. The rules under former proposed § 301.6226–3(e) were revised in the August 2018 NPRM to reflect the amendment to section 6226(b)(4). See section 4.A. of the preamble to the August 2018 NPRM.

Three comments were received regarding proposed § 301.6226–3(e). The comments focused on three topics: (1) the statements furnished under proposed § 301.6226–3(e)(3); (2) the computation of an imputed underpayment under proposed § 301.6226–3(e)(4); and (3) the payment of the additional reporting year tax by affected partners in accordance with proposed § 301.6226–3(e)(4)(iv).

I. Statements furnished under § 301.6226–3(e)(3)

Proposed § 301.6226–3(e)(1) provided that each pass-through partner that is furnished a statement described in § 301.6226–2 with respect to adjustments of an audited partnership must file and furnish statements to its affected partners. Affected partners are persons that held an interest in the pass-through partner at any time during the taxable year of the pass-through partner to which the adjustments in the statement relate. Consistent with section 6226(b)(4)(B), proposed § 301.6226–3(e)(3)(ii) provided that a pass-through partner must furnish such statements no later than the extended due date for the return for the adjustment year of the audited partnership. One comment recommended that the regulations provide a process by which a pass-through partner could apply to the IRS for a discretionary short-term extension of the time period set out in proposed § 301.6226–3(e)(3)(ii). This extension would address exceptional or unusual circumstances in which a pass-through partner is unable to furnish the statements to all its affected partners within the specified time frame. This comment was not adopted.

Section 6226(b)(4)(B) expressly provides that statements under section 6226(b)(4)(A) "shall be furnished by not later than the due date for the return for the adjustment year of the audited partnership." The statute does not provide for an extension beyond the extended due date of the adjustment year return. Under proposed § 301.6226–3(e)(3)(ii), the adjustment year return due date is the extended due date under section 6081 regardless of whether the audited partnership is required to file a return for the adjustment year or timely files a request for an extension under section 6081 and the regulations thereunder. As a threshold matter, the language of section 6226(b)(4)(B), providing that statements "shall be furnished not later than" the due date suggests that discretionary extensions are not permissible. Furthermore, the due date for furnishing statements to affected partners must be fixed for all pass-through partners for the IRS to ensure statements are furnished timely and payments are timely made. In addition, the ultimate affected partners are obligated to file and pay additional reporting year tax by the extended due date of the audited partnership. Extending the due date for furnishing statements to affected partners for any pass-through partner would cause delays for upper tier affected partners and potentially subject ultimate affected partners to penalties for filing or paying additional reporting year tax more than 30 days after the extended due date. Therefore, the regulations do not provide for discretionary extensions of the time period that was set forth in proposed § 301.6226–3(e)(3)(ii).

Another comment observed that the proposed regulations did not specify who at the IRS must receive the statements furnished by a pass-through partner and recommended that the final regulations clearly state to whom at the IRS pass-through partner statements should be directed. This comment was not adopted, but the regulations were revised to provide that a pass-through partner must file and furnish statements to its affected partners in accordance with forms, instructions, or other guidance prescribed by the IRS. Providing the method for filing and furnishing statements in forms, instructions, and other guidance provides the IRS with the flexibility to change the filing and furnishing procedures as appropriate and necessary without needing to amend the regulations. This flexibility is particularly important as the IRS gains experience with the centralized partnership audit regime. Flexibility also preserves government resources and will expedite the process for the IRS to respond to taxpayer needs and for taxpayers to be aware of changes in IRS procedures.

Under § 301.6226–3(e)(3)(iii), each statement furnished by a pass-through partner must include correct information concerning certain enumerated items. These items include the name and TIN of the affected partner to whom the statement is being furnished as well as any other information required by forms, instructions, and other guidance prescribed by the IRS. One comment suggested that the regulations should clarify whether a statement provided under proposed § 301.6226–3(e) would be effective without the TIN of the affected partner if the affected partner is a foreign person not otherwise required to obtain a TIN. The comment observed that foreign persons generally are not required to obtain a U.S. TIN, particularly if they will not claim the benefits of a U.S. tax treaty.

Proposed § 301.6226–3(e)(3)(iii) required each statement furnished by a pass-through partner to include the correct TIN of the affected partner. This information is critical to the administration of the push out regime because it allows the IRS to identify the person to whom the statement is furnished, and it provides the IRS with the ability to match the adjustments on that statement with the return filed by the affected partner. In response to this comment, however, the final regulations require that a push out statement furnished under § 301.6226–3(e) include the partner's TIN "or alternative form of identification as prescribed by forms, instructions, or other guidance." See also § 301.6226–2(e) (imposing the same requirement for push out statements furnished to reviewed year partners). In addition, the election under § 301.6226–1 by the audited partnership must include the TIN "or alternative form of identification as prescribed by forms, instructions, or other guidance" for each reviewed year partner of the partnership. See § 301.6226–1(c)(3)(ii). The addition of the quoted language in each section contemplates that there may be situations in which an alternative form of identification for certain partners is warranted.

Accordingly, as the IRS gains experience with the centralized partnership audit regime, the IRS may allow for the use of an alternative form of identification through forms, instructions, or other guidance if the IRS determines such identification is appropriate for foreign persons. This flexibility gives the IRS and partnerships time to evaluate whether an alternative form of identification is administrable and beneficial without needing to amend the regulations to allow for alternative identification, which preserves government resources and expedites the process by which the IRS responds to taxpayer needs and taxpayers become aware of changes in IRS procedures.

The same comment also recommended that to the extent practicable, the IRS identify as soon as possible any additional information that may be required in additional forms, instructions, or other guidance for statements under § 301.6226–3(e)(3). The comment suggested regulations or drafts of forms or instructions could identify such additional information, which would allow partnerships to timely, completely, and accurately collect necessary data from partners to comply with requirements and avoid the risk that the IRS would deny a push out election due to incomplete or inaccurate or untimely data.

As discussed earlier in this section of the preamble, maintaining the ability to require additional information on forms, instructions, or other guidance gives the IRS the flexibility to adapt statements without having to amend the regulations. At the same time, the IRS recognizes the need of taxpayers to know of the information required to not jeopardize compliance with the regulations. The IRS plans to develop and release drafts of forms and instructions for public inspection as soon as possible.

In addition to the changes described earlier in this Summary of Comments and Explanation of Revisions, two other clarifying changes were made to § 301.6226–3. First, § 301.6226–3(e)(3)(iii)(M) was clarified to provide that the information required to be included in statements furnished to affected partners regarding the applicability of penalties, additions to tax, or additional amounts are the determinations made at the audited partnership level pertaining to the applicability of penalties, additions to tax, or additional amounts. This change reinforces the notion that the applicability of penalties is determined at the audited partnership level and that penalties attach to adjustments as they are pushed out through the tiers. An affected partner that pays an imputed underpayment or additional reporting year tax independently determines the amount of any penalty applicable to adjustments that are taken into account by the affected partner.

In addition, § 301.6226–3(e)(4)(iv)(B) was clarified to provide that when determining interest on an imputed underpayment paid by a pass-through partner, the imputed underpayment is treated as if it were a correction amount for the first affected year. This change conforms the language in § 301.6226–3(e)(4)(iv)(B) with the language in § 301.6226–3(c) regarding interest on correction amounts.

II. Modifications available to pass-through partner paying an imputed underpayment

If a pass-through partner does not furnish statements, the pass-through partner must compute and pay an imputed underpayment in accordance with proposed § 301.6226–3(e)(4). Section 6226(b)(4)(A)(ii)(II); proposed § 301.6226–3(e)(2). Pursuant to proposed § 301.6226–3(e)(4)(iii), this imputed underpayment is computed in the same manner as an imputed underpayment under section 6225 and § 301.6225–1. In calculating an imputed underpayment under proposed § 301.6226–3(e)(4)(iii), a modification is taken into account if it was approved by the IRS under § 301.6225–2 with respect to the pass-through partner (or any relevant partner holding its interest in the audited partnership through the pass-through partner) and it is reflected on the statement furnished to the pass-through partner. Any modification that was not approved by the IRS under § 301.6225–2 may not be taken into account. Proposed § 301.6226–3(e)(4)(iii).

One comment suggested that it was unclear under proposed § 301.6226–3(e)(4) whether a pass-through partner that elects to pay an imputed underpayment is only permitted to make modifications that are included on the information statement furnished to the pass-through partner or whether the pass-through partner also may make modifications based on the pass-through partner's own partners (to the extent such modification is not already reflected on the information statement). The comment recommended that the pass-through partner be permitted to make modifications based on its own partners to the extent the pass-through partner would be permitted to make modifications under section 6225 if it were the partnership directly under audit. This comment was not adopted.

Section 6226(b)(4)(A)(ii)(II) provides that a partnership may compute and pay an imputed underpayment under rules similar to the rules of section 6225 (other than section 6225(c)(2), (7), and (9)). Section 6226(b)(4)(A)(ii)(II) does not explicitly carve out section 6225(c)(8), which provides that any modification of the imputed underpayment amount under section 6225(c) shall be made only upon approval of such modification by the Secretary. Consistent with section 6225(c)(8), proposed § 301.6226–3(e)(4)(iii) only allows modifications approved by the IRS under proposed § 301.6225–2 to be taken into account in calculating an imputed underpayment with respect to a pass-through partner. Modifications approved by the IRS under § 301.6225–2 are only those modifications requested by the audited partnership and approved during the administrative proceeding with respect to the audited partnership. See § 301.6225–2(b). A pass-through partner may not use modifications that were not requested or approved in the administrative proceeding with respect to the audited partnership in calculating its imputed underpayment under proposed § 301.6226–3(e)(4).

Allowing a pass-through partner to apply modifications that were not previously requested or approved in calculating its imputed underpayment is contrary to the centralized nature of an administrative proceeding under the centralized partnership audit regime. Partnership adjustments are determined at the partnership level. Section 6221(a). The imputed underpayment is a partnership-related item and therefore modifications to the imputed underpayment are determined at the partnership level. The modification provisions under § 301.6225–2 are the appropriate method for determining whether and to what extent a modification should be allowed. Allowing pass-through partners to raise, for the first time, modifications during the push out is inconsistent with making such determinations at the partnership level. Allowing such modifications would create significant administrative burdens for the IRS. For one, the IRS would have to expend increased time and resources to review any modifications applied during push out that were not previously evaluated and approved during the modification process at the audited partnership level. This concern would be exacerbated in situations where there are multiple tiers of entities applying multiple types of additional modifications. For instance, a pass-through partner might raise again a modification that was rejected by the IRS at the audited partnership level during the modification process, causing further administrative delay and burden. Furthermore, if a modification applied by a pass-through partner was incorrectly applied, the IRS would have to expend time and resources to correct the incorrectly claimed modification, resulting in additional delays in the collection of amounts due as a result of the examination and the push out election.

iii. Payment of additional reporting year tax by affected partners

Proposed § 301.6226–3(e)(3)(iv) provided that affected partners that are not pass-through partners must take into account their share of adjustments reflected on a statement furnished under proposed § 301.6226–3(e)(3) in accordance with proposed § 301.6226–3(e). When taking into account the adjustments, an affected partner that is not a pass-through partner bases its reporting year on the date the audited partnership furnished its statements to its reviewed year partners. As a result, the reporting year of an affected partner that is not a pass-through partner will be the same taxable year as the reporting year of a reviewed year partner that is also not a pass-through partner.

As discussed in section 1 of the Explanation of Provisions in the preamble to the December 2017 NPRM, there may be circumstances in which a statement is not furnished to an affected partner that is not a pass-through partner in time for the partner to report and pay the additional reporting year tax by the unextended due date of the partner's return for the reporting year. To account for this situation, proposed § 301.6226–3(e)(3)(iv) provided that the IRS will not impose any additions to tax under section 6651 related to any additional reporting year tax if an affected partner that is not a pass-through partner reports and pays any additional reporting year tax within 30 days of the extended due date for the return for the adjustment year of the audited partnership.

One comment recommended that the 30-day period under proposed § 301.6226–3(e)(3)(iv) should be extended to at least 60 days and that there be a mechanism for requesting and obtaining an extension of this deadline when needed. This comment was not adopted.

While it may be difficult to accurately compute and pay the additional reporting year tax in situations where the affected partner receives the statement close in time to the extended due date of the reporting year return, the affected partner has options available to mitigate any additions to tax under section 6651. First, the regulations under § 301.6226–3(e)(3)(iv) provide a 30-day period in which the IRS will not impose a section 6651 penalty. Second, the affected partner may make an estimated tax payment prior to the due date for the reporting year and use that payment as a credit against any potential liability for the additional reporting year tax to avoid failure to pay penalties.

Third, the affected partner may also request that any additions to tax under section 6651 be abated due to reasonable cause. Nothing in the regulations under the centralized partnership audit regime alters the mechanisms by which a taxpayer may raise a reasonable cause defense in response to a proposed penalty. Existing regulations under § 301.6651–1(c)(1) and the Internal Revenue Manual provide procedures for raising a reasonable cause defense to avoid an addition to tax under section 6651. If an addition to tax under section 6651 is asserted because a taxpayer did not pay the entire additional reporting year tax within 30 days of the extended due date of the audited partnership's adjustment year return, the taxpayer may follow those existing procedures to raise any reasonable cause and good faith defense that may be applicable to the taxpayer's delay in payment.

iv. Qualified Investment Entities and MLPs

Proposed § 301.6226–3(b)(4) provided rules for qualified investment entities (QIEs), such as real estate investment trusts and regulated investment companies, to utilize the deficiency dividend procedures under section 860 when taking into account the adjustments under section 6226(b). One comment recommended that the Treasury Department and the IRS adopt the rules as proposed in § 301.6226–3(b)(4) without change in the final regulations. This comment was adopted.

Another comment recommended that in the case of an MLP, the safe harbor calculation for a partner should take into account the partner's share of specified passive activity losses within the meaning of section 6225(c)(5)(B). As discussed earlier in this section of the preamble, the safe harbor amount was removed from the regulations in the December 2017 NPRM, no comments were received regarding its removal, and the final regulations do not include a safe harbor amount. Accordingly, this comment was not adopted.

v. Examples Under Proposed § 301.6226–3(h)

Proposed § 301.6226–3(h) provided examples that illustrated the rules of proposed § 301.6226–3. One comment recommended that additional examples be added to § 301.6226–3(h) to show the proper treatment of two situations. The first situation involved the IRS approving a modification based on a partner filing an amended return, the partnership challenging the IRS's adjustment in Tax Court, and the amount of the adjustment being subsequently reduced. The second situation involved the IRS determining at the partnership level a 20 percent accuracy-related penalty with respect to the partnership adjustments and the IRS approving a modification based on a partner's status as a tax-exempt entity. The comment suggested that the example illustrate how the amount of the penalty is calculated in this situation after allowance for the modification with respect to the tax-exempt entity and how the penalty is allocated among all partners, including the tax-exempt entity.

These hypotheticals were described within the portion of the comment addressing section 6226. Therefore, notwithstanding that the comment did not explicitly state that the partnership in the hypothetical made a push out election, for purposes of addressing these comments it is assumed that the partnership did make the push out election. After careful consideration, the Treasury Department and the IRS have declined to add these examples because, as described in this section of the preamble, both situations describe fact patterns that are addressed by a straight forward application of the proposed regulations, as revised in the December 2017 and August 2018 NPRMs, and thus the examples would not help clarify any aspect of the rules.

The first situation is addressed by proposed § 301.6226–3(b)(2) and (3), which provided that in calculating a correction amount, decreases in tax should be taken into account and that amounts shown on amended return filed during modification should be accounted for in the calculation. As described earlier in section C.i. of this preamble, proposed § 301.6226–3(b)(2) and (3) was revised in the August 2018 NPRM to reflect the amendments to section 6226(b) by the TTCA. As amended, section 6226(b) provides that when a reviewed year partner takes into account pushed out adjustments, the partner's chapter 1 tax for the reporting year is adjusted by the amounts the partner's chapter 1 tax for the first affected year or any intervening year would increase or decrease if the partner's share of the adjustments were taken into account in the first affected year. As a result, under proposed § 301.6226–3(b)(2) and (3) as revised in the August 2018 NPRM, a correction amount and the additional reporting year tax can be less than zero.

When the partner in the first hypothetical calculates the correction amount for the year that was amended, the partner recomputes its tax for the year by starting with the amount of tax shown on the amended return, which had been based on the full amount of the adjustment (prior to its reduction by the court decision). The partner then determines the amount the partner's chapter 1 tax would have increased *or decreased* were the reduced adjustment taken into account for that year. If the partner's tax for the amended year decreases as a result of the reduced adjustment, that decrease in tax produces a negative correction amount, which in turn produces a negative additional reporting year tax. The negative additional reporting year tax would then reduce the partner's tax for the reporting year.

The second situation is addressed by proposed § 301.6226–3(d) as previously revised in the December 2017 NPRM. As discussed earlier in this section of the preamble, proposed § 301.6226–3(d)(2) provided that each reviewed year partner calculates its penalty amount by treating the correction amounts determined under § 301.6226–3(b) as if they were underpayments or understatements for the first affected year or any intervening year. This rule is different from the rule initially set forth in former proposed § 301.6226–2(f)(3). Under the former rule, to which the comment's recommendation related, each partner was allocated their share of the penalty that was calculated at the partnership level. Under the rule in proposed § 301.6226–3(d), however, a partner's penalty calculation is based on the characteristics of, and facts and circumstances applicable to, the reviewed year partner. Accordingly, while the applicability of the accuracy-related penalty in the second hypothetical described by the comment was determined at the partnership level, if as a result of taking into account the adjustments under § 301.6226–3(b), the tax-exempt entity would not have an underpayment or understatement for which a penalty was applicable, the penalty amount calculated by the tax-exempt entity pursuant to § 301.6226–3(d)(2) would be zero. Whether modification was requested or approved with the tax-exempt entity would not affect this determination.

The same comment also recommended adding an example to show the proper application of partner and partnership-level tax attributes to the calculation of a correction amount for an intervening year. This recommendation was also not adopted.

Former proposed § 301.6241–1(a)(10) had defined the term tax attribute to include both the tax attributes of the partnership and the tax attributes of its partners. This definition was changed in the August 2018 NPRM to remove references to the partnership or the partner. This change allows "tax attribute" to apply to the partnership or to a partner depending on the particular context within which it is used. See section 11.A. of the preamble to the August 2018 NPRM. As a result, the definition of tax attribute in proposed § 301.6241–1(a)(10), as revised, did not refer to either the partnership or its partners.

Former proposed § 301.6226–3(b)(3) had provided that an intervening year correction amount was derived by recomputing a partner's taxable income by taking into account any adjustments to tax attributes. After the change to the definition to tax attribute, proposed § 301.6226–3(b)(3) was revised to make clear that in the context of calculating an intervening year correction amount, it is the "tax attributes of the partner" that are relevant, not the tax attributes of the partnership. As a result, under proposed § 301.6226–3(b)(3) as revised in the August 2018 NPRM, partnership-level tax attributes no longer factor into the calculation of an intervening year correction amount. See proposed § 301.6226–3(h), Example 7; section 4.A. of the preamble to the August 2018 NPRM. Given these revisions, an example showing the application of partnership-level tax attributes would no longer be accurate for computing an intervening correction amount under § 301.6226–3(b)(3).

The Treasury Department and the IRS have also declined to add an example illustrating the application of a partner's tax attributes to the calculation of its correction amount for an intervening year. Creating an example involving the tax attributes of a specific partner would necessitate a description of that particular partner's tax profile and would require a number of assumptions that would strip the example of its utility.

Example 5 of proposed § 301.6226–3(h) described a situation in which the IRS determines a $200 partnership adjustment with respect to taxable year 2020 and a resulting $40 imputed underpayment. During the modification process, Partner F files amended returns for 2020, 2021, and 2022 taking into account F's share of the $200 partnership adjustment, and the IRS approves that modification. See § 301.6225–2(d)(2). The partnership elects to make a push out election with respect to the $40 imputed underpayment and furnishes a statement to F reflecting F's share of the $200 partnership adjustment and reflecting the approval of F's amended return modification.

Former proposed § 301.6226–3(g) had provided that F computes its correction amounts for the first affected year and the intervening years and that F "computes any additional chapter 1 tax for those years using the returns for 2020, 2021, and 2022 taxable years as amended during the modification process." One comment found the quoted language ambiguous and recommended the language be revised to provide that "F's computation will take into account the additional chapter 1 tax that F reported and paid pursuant to the modification process on amended returns for the 2020, 2021, and 2022 taxable years." This comment has been adopted.

Although F takes into account the chapter 1 tax F reported and paid with its amended returns, F still must compute the correction amounts for each year under § 301.6226–3(b). F cannot assume F's additional reporting year tax is zero because of the fact F filed an amended return and took into account the adjustments during the modification process. For example, F may have inadvertently taken the adjustments into account incorrectly when filing its amended returns or filed a subsequent amended return, and as a result F may compute an additional reporting year tax that is greater than (or possibly less than) zero when F performs the calculation under § 301.6226–3(b) for the reporting year.

The comment also recommended changing the language "[t]he time to file a petition expires on" in Examples 2–4 and 6–9 under proposed § 301.6226–3(h) to "[t]he last day to file a petition is." Under § 301.6226–2(b)(1)(i), if a petition is not filed under section 6234, the adjustments become finally determined upon the expiration of the time to file a petition under section 6234. Although this is determined in relation to the last day to file a petition under section 6234, the language in the examples mirrors the regulatory language under § 301.6226–2(b)(1)(i). Changing the language in the examples to differ from the language in the rule could create confusion and ambiguity. Accordingly, this comment was not adopted.

Lastly, several comments noted typographical errors and incorrect cross-references in the examples under former proposed § 301.6226–3. These errors were fixed in proposed § 301.6226–3(h). See section 4.B. of the preamble to the August 2018 NPRM.

5. *Administrative Adjustment Requests*

Four comments were received concerning administrative adjustment requests under section 6227. The comments addressed the following topics: (1) the requirement that the partnership representative must sign an AAR; (2) the ability to report multiple imputed underpayments in a single AAR; (3) the modifications available in the case of an AAR; (4) how partners take into account adjustments requested in an AAR; (5) the availability of the safe harbor amount; (6) the application of section 905(c); and (7) how partnerships that have elected out of the centralized partnership audit regime file amended returns. In addition to addressing the comments, this section of the preamble explains a change to the rules regarding whether an AAR is valid if it fails to include required statements and interest with respect to imputed underpayments reported on an AAR.

A. *Requirement that the partnership representative signs an AAR*

Proposed § 301.6227–1(c) provided the form and manner for making an AAR under the centralized partnership audit regime, including the rule that an AAR must be signed under penalties of perjury by the partnership representative. One comment recommended that the regulations remove the requirement that the partnership representative sign an AAR and instead allow any person authorized to sign the original partnership return to sign the AAR. This comment was not adopted.

Under section 6223(b), the partnership and all partners of such partnership are bound by actions taken under the centralized partnership audit regime by the partnership. See § 301.6223–2(a). The filing of an AAR under section 6227 is an action under the centralized partnership audit regime. Under section 6223(a), the partnership representative has the sole authority to act on behalf of the partnership under the centralized partnership audit regime. Consequently, only the partnership representative has the authority to file an AAR under section 6227, and the final regulations maintain the requirement that the partnership representative sign an AAR.

The comment expressed concern that, in some circumstances, obtaining the signature of the partnership representative could be difficult or impossible. For example, if the partnership representative is deceased or where a partnership representative whose designation is being revoked refuses to sign the AAR. The regulations under section 6223 and 6227 accommodate the concern illustrated in these examples. Under § 301.6223–1(e)(2)(ii), a partnership may revoke a designation of a partnership representative by filing a valid AAR in accordance with section 6227. The revocation must include a designation of a successor partnership representative. § 301.6223–1(e)(1). Both the revocation and the designation are effective on the date the partnership files the AAR. § 301.6223–1(e)(3).

Proposed § 301.6227–1(a) provided that when the partnership changes the designation of the partnership representative in conjunction with the filing of an AAR in accordance with § 301.6223–1(e), the change in designation is treated as occurring prior to the filing of the AAR. Under this rule, the prior partnership representative is revoked and a new partnership representative is designated prior to the time the AAR is filed, with the result that the newly designated partnership representative is the partnership representative of record at the time the AAR is filed. This rule was designed to address the circumstances described by the comment when it may be difficult to obtain the signature of the prior partnership representative and to make clear that it is the newly designated partnership representative that signs an AAR. Because § 301.6227–1(a), in connection with the regulations under section 6223, adequately address the concerns raised by the comment, the comment was not adopted.

B. *Multiple imputed underpayments*

Proposed § 301.6227–1(a) provided that when filing an AAR, the partnership must determine whether the adjustments requested in the AAR result in an imputed underpayment. Under proposed § 301.6227–2(a)(1), the determination of whether adjustments requested in an AAR result in an imputed underpayment and the determination of the amount of the imputed underpayment is made in accordance with the rules under § 301.6225–1. Generally, a partnership must pay any imputed underpayment determined under § 301.6227–2(a) resulting from the adjustments requested in an AAR on the date the partnership files the AAR. Proposed § 301.6227–2(b). In lieu of paying the imputed underpayment under § 301.6227–2(b), the partnership may elect to have each reviewed year partner take into account the adjustments requested in the AAR in accordance with § 301.6227–3. Proposed § 301.6227–2(c).

One comment observed that it was unclear whether the references to "*an* imputed underpayment" in proposed § 301.6227–2(a)(1) and to "*the* imputed underpayment" in proposed § 301.6227–2(c) imply that there can be only one imputed underpayment in an AAR, or whether more than one imputed underpayment can be calculated in an AAR. The comment recommended the regulations should clarify that a single AAR can result in multiple imputed underpayments, some of which can be paid while others are pushed out, and that adjustments that do not result in an imputed underpayment can be pushed out.

Neither section 6227 nor the regulations thereunder prohibit a partnership from filing multiple AARs for the same taxable year to request multiple adjustments to partnership-related items. To allow the IRS to respond to issues that arise in implementing the new partnership audit regime, proposed § 301.6227–1(c) required that an AAR must be filed with the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS. The current version of the form prescribed by the IRS for filing an AAR is not designed to accommodate the reporting of multiple imputed underpayments. A partnership may file multiple AARs to allocate adjustments into separate imputed underpayments. For example, the partnership may file one AAR reporting an imputed underpayment that the partnership pays, while filing another AAR reporting an imputed underpayment for which the partnership elects to push out the adjustments associated with that imputed underpayment. Accordingly, a partnership, by filing multiple AARs, can achieve the result requested by the comment – that is, the ability to pay an imputed underpayment with respect to certain adjustments and push out other adjustments associated with a different imputed underpayment.

In response to the comment, the regulations have been revised to refer to "an" or "any" imputed underpayment, as appropriate, to accommodate future cases in which an AAR may result in more than one imputed underpayment. In addition, §§ 301.6227–2(c) and 301.6227–3(a) have been revised to clarify that in the case of an election to have the reviewed year partners take into account the adjustments in an AAR, such partners take into account only those adjustments that are associated with the imputed underpayment to which the election relates. Notwithstanding these revisions, the regulations continue to refer to the form for filing an AAR and its instructions for purposes of instructing how a partnership requests adjustments in an AAR that result in an imputed underpayment.

C. *Modifications available in the case of an AAR*

Proposed § 301.6227–2(a)(2) provided that a partnership may apply modifications to the amount of the imputed underpayment determined under proposed § 301.6227–2(a)(1) using only certain, enumerated modifications as described in proposed § 301.6225–2 or as provided in forms, instructions, or other guidance prescribed by the IRS with respect to AARs. A partnership may not modify an imputed underpayment resulting from adjustments requested in an AAR except as described in proposed § 301.6227–2(a)(2).

Proposed § 301.6225–2(d)(10) provided a catch-all provision for other modifications under which a partnership may request a modification not described in proposed § 301.6225–2(d), and the IRS will determine whether such modification is accurate and appropriate. Similarly, proposed § 301.6225–2(d)(10) provided that additional types of modifications, and the documentation necessary to substantiate such modifications, may be set forth in forms, instructions, or other guidance.

One comment suggested that the regulations should be more flexible regarding the types of modifications that are allowed in the case of an AAR. Specifically, the comment recommended that proposed § 301.6227–2(a)(2) be revised to allow for the catch-all provision under proposed § 301.6225–2(d)(10) on the condition that the IRS approves of the relevant modification upon review of the AAR. This comment was not adopted.

Both proposed § 301.6225–2(d)(10), in the context of an audit, and proposed § 301.6227–2(a)(2), in the context of an AAR, provide that the IRS may set forth additional modifications in forms, instructions, or other guidance. To the extent the comment was recommending that adoption of the § 301.6225–2(d)(10) catch-all provision in § 301.6227–2(a)(2) would allow the IRS to set forth other modifications not specifically described in proposed § 301.6227–2(a)(2), that ability is already provided for by the plain language of § 301.6227–2(a)(2).

To the extent the comment was recommending a rule in which a partnership could request a modification in an AAR on the condition that modification is only allowed upon approval by the IRS, the comment was not adopted. The final regulations adopt the rule that a partnership may not modify an imputed underpayment resulting from adjustments requested in an AAR except for the modifications described in proposed § 301.6227–2(a)(2). Under proposed § 301.6227–2(a)(2)(i), the partnership is not required to seek approval from the IRS prior to applying modifications to the amount of any AAR imputed underpayment. This rule permits a partnership to determine an imputed underpayment that results from the adjustments requested in an AAR and apply modifications when calculating the amount of the imputed underpayment the partnership needs to pay when filing the AAR. The Treasury Department and the IRS have determined that this procedure is more administrable for the IRS and allows partnerships to more effectively file AARs and take any adjustments into account. The partnership does not have to wait for an IRS determination regarding specific modifications before determining the amount of the imputed underpayment as modified, which would significantly hamper the AAR process.

Because the partnership applies modifications prior to the IRS reviewing and approving such modifications, the specifically enumerated modifications in the regulations are limited to the types of modifications for which the IRS already has procedures and systems in place. This permits the IRS, when it reviews an AAR, to utilize those procedures and systems to determine the accuracy and appropriateness of the modification that was applied in the AAR. The limitation on the types of modifications, in addition to the detailed information required under § 301.6227–2(a)(2)(ii), is designed to provide partnerships the ability to reasonably modify an imputed underpayment resulting from adjustments requested in an AAR while not creating undue delay for the partnership and its partners to take the adjustments into account. Also, by providing certainty regarding the permissible types of modifications, a partnership will be able to efficiently use its time and resources in determining whether it will pay an imputed underpayment or elect to have its partners take into account the adjustments. Finally, as the IRS gains more experience with modifications in connection with an AAR under the centralized partnership audit regime, § 301.6227–2(a)(2) provides the ability for the IRS to expand the set of allowed modifications through the use of forms, instructions, or other guidance.

D. *Partners taking into account adjustments requested in an AAR*

Former proposed § 301.6227–3 included a reserved paragraph regarding how a reviewed year partner that is a pass-through partner takes into account its share of adjustments requested in an AAR. In response to the June 2017 NRPM, one comment recommended that the regulations should allow a pass-through partner to push out its share of adjustments to the next tier of partners. The December 2017 NPRM contained proposed rules under § 301.6227–3 allowing for pass-through partners to take into account adjustments requested in an AAR by either making a payment or pushing out the adjustments to the next tier of partners, similar to the rules under proposed § 301.6226–3(e). The rules under proposed § 301.6227–3 were further revised in the August 2018 NPRM to reflect the amendments by section 204 of the TTCA and the corresponding changes to proposed § 301.6226–3(e). See section 5 of the preamble to the August 2018 NPRM. As a result, the comment was adopted in the August 2018 NPRM and is also included in the final regulations.

Example 2 under proposed § 301.6227–3(b)(2), regarding how partners other than pass-through partners take into account AAR adjustments, was revised to remove the language indicating that the partner may make a claim for refund with respect to the overpayment of $25. Instead, the final regulations provide that the partner may make a claim for refund with respect to "any overpayment." Section 301.6227–3(b)(1) provides that nothing in the rules under § 301.6227–3 entitles any partner to a refund of chapter 1 tax to which such partner is not entitled. Whether an overpayment exists is determined under provisions of the Code and relevant case law outside the scope of these regulations. Generally, an overpayment and the amount of a refund of an overpayment cannot exceed the amount of tax paid. See section 6511(b)(2), *Jones v. Liberty Glass*, 332 U.S. 524, 531 (1947). No refund or credit can be made unless it has first been determined that the taxpayer has made an overpayment of tax for the period at issue. *Lewis v. Reynolds*, 284 U.S. 281, 283 (1932).

Example 2 was also revised to clarify that the partner's chapter 1 tax for 2022 is -$25, that is, negative $25. This change conforms Example 2 to the rules under § 301.6226–3(b) which allow for the additional reporting year tax to reduce a partner's chapter 1 tax for the reporting year.

Finally, minor revisions were made to clarify that any adjustment that does not result in an imputed underpayment is taken into account by reviewed year partners.

E. *Availability of safe harbor for partners taking into account adjustments*

The June 2017 NPRM requested comments on whether the election to pay a safe harbor amount under former proposed § 301.6226–3 should be available in the case of a partner that must take into account adjustments requested in an AAR under proposed § 301.6227–3. One comment recommended that the regulations require a partnership filing an AAR to calculate a safe harbor amount for each partner required to take into account the adjustments requested in the AAR and include such safe harbor amount in the statement furnished to the partner.

For the reasons discussed in section 4 of the preamble to the December 2017 NPRM, the safe harbor amount was removed from the regulations. No comments were received regarding its removal, and the final regulations do not include a safe harbor amount. Accordingly, this comment was not adopted.

F. *Application of section 905(c)*

One comment recommended rules for how a partnership subject to the centralized partnership audit regime can fulfill the requirements of section 905(c), including the rules relating to the assessment and collection of interest on certain refunds of creditable foreign taxes. The final regulations under section 6227 do not provide rules regarding the application of section 905(c), but do include a reserved paragraph regarding notice of change to amounts of creditable foreign tax expenditures. See § 301.6227–1(g). The recommendations put forth by the comment remain under consideration.

G. *Partnerships that have elected out of the centralized partnership audit regime*

One comment suggested that the regulations address how a partnership that has a valid election under section 6221(b) in effect for a particular taxable year should report changes to its original partnership return from that year. Section 6227 is the mechanism for partnerships that are subject to the centralized partnership audit regime to file an AAR to correct errors on a partnership for a prior year. A partnership that has made a valid election under section 6221(b) in accordance with § 301.6221(b)–1 is not subject to such regime. Accordingly, a partnership that has elected out of the centralized partnership audit regime is not subject to section 6227 and therefore does not file an AAR to correct errors on its original return. The manner in which a partnership that has elected out should report changes to its original return is outside the scope of these regulations.

H. *Whether an AAR is valid without statements*

Proposed § 301.6227–1(c)(2) provided that a valid AAR must include the adjustments requested, the statements described in § 301.6227–1(e) if a reviewed year partner is required to take into account the adjustments requested, and other information prescribed by the IRS in forms, instructions, or other guidance. The final regulations clarify that in the case of a failure to provide the information required under § 301.6227–1(c)(2), the IRS may, but is not required to, invalidate an AAR or readjust items that were adjusted in the AAR.

Conversely, the word "valid" was added to § 301.6227–2(b)(1) to clarify that only a valid election under § 301.6227–2(c) turns off the partnership's obligation to pay an imputed underpayment resulting from adjustments requested in an AAR.

I. Adjustments that do not result in an imputed underpayment

Under § 301.6225–1(f)(1), two situations occur where there may be adjustments that do not result in an imputed underpayment. Under § 301.6225–1(f)(1)(i), a partnership adjustment does not result in an imputed underpayment if the result of netting with respect to any grouping or subgrouping that includes the particular partnership adjustment is a net negative adjustment. Under § 301.6225–1(f)(1)(ii), a partnership adjustment does not result in an imputed underpayment if the calculation under § 301.6225–1(b)(1) resulted in an amount that is zero or less than zero. Proposed § 301.6227–3(c)(2) provided rules regarding how a pass-through partner takes into account adjustments that do not result in an imputed underpayment. The proposed rule was unclear as to whether the rule applied to both types of situations. The final regulations under § 301.6227–3(c)(2) clarify that a pass-through partner must take into account AAR adjustments that, with respect to that pass-through partner, do not result in an imputed underpayment by furnishing statements to its affected partners. This rule applies to both adjustments that do not result in an imputed underpayment pursuant to § 301.6225–1(f)(1)(i) and adjustments that do not result in an imputed underpayment pursuant to § 301.6225–1(f)(1)(ii). This rule also applies in situations where the pass-through partner pays an imputed underpayment. The final regulations under § 301.6227–1(e)(2) additionally clarify that when a partnership pays an imputed underpayment and there are adjustments that did not result in that imputed underpayment pursuant to § 301.6225–1(f)(1)(i), only the adjustments that did not result in an imputed underpayment are to be included in the statements to its affected partners.

J. *Interest with respect to an imputed underpayment resulting from AAR adjustments*

Proposed § 301.6227–2(b)(2) provided that interest on an imputed underpayment resulting from adjustments requested in an AAR is determined under chapter 67 of the Code for the period beginning on the date after the due date of the partnership return for the reviewed year (determined without regard to extension) and ending on the earlier of the date payment of the imputed underpayment is made, or the due date of the partnership return for the adjustment year. In the case of any failure to pay an imputed underpayment by the due date of the partnership return for the adjustment year, interest is determined in accordance with section 6233(b)(2). Proposed § 301.6227–2(b)(2).

To conform the rules under proposed § 301.6227–2(b)(2) with the rules under proposed §§ 301.6232–1(b), 301.6233(a)–1(b), and 301.6233(b)–1(c), the final regulations provide that interest on an imputed underpayment resulting from adjustments requested in an AAR ends on the date the AAR is filed. In the case of any failure to pay an imputed underpayment on the date the AAR is filed, interest is determined in accordance with section 6233(b)(2) and § 301.6233(b)–1(c).

6. *Notices of proceedings and adjustments*

Former proposed § 301.6231–1(b)(1) provided that a notice of proposed partnership adjustment (NOPPA) is timely if it is mailed before the expiration of the period for making adjustments under section 6235(a)(1), including any extensions of that period under section 6235(b) and after applying any of the special rules in section 6235(c). After former proposed § 301.6231–1(b)(1) was issued, section 206(h) of the TTCA amended section 6231(b) to provide that a NOPPA shall not be mailed later than the date determined under section 6235(a)(1). Prior to this amendment, the statute did not limit the period for the IRS to propose adjustments under the centralized partnership audit regime. Because former proposed § 301.6231–1 comported with the TTCA amendments to section 6231, former proposed § 301.6231–1 was not revised when the regulations were re-proposed in the August 2018 NPRM.

One comment received prior to the issuance of former proposed § 301.6231–1 and before the TTCA amendments to section 6231(b) recommended that the regulations clarify that a NOPPA must be issued within the three-year period specified in section 6235(a)(1). Because the statute and the plain language of proposed § 301.6231–1 reflect the rule suggested by this comment, the final regulations adopt the language of the proposed regulations without change.

Section 6227(c) provides that a partnership has three years from the later of the filing of the partnership return or the due date of the partnership return (excluding extensions) to file an AAR for a taxable year. However, a partnership may not file an AAR for a partnership taxable year after the IRS has mailed a NAP under section 6231 with respect to that taxable year. Section 6227(c); § 301.6227–1(b). Proposed § 301.6231–1(f) provided that the IRS may, without consent of the partnership, withdraw any NAP or NOPPA, and any NAP or NOPPA that has been withdrawn by the IRS has no effect for purposes of subchapter C of chapter 63. If the IRS withdraws a NAP with respect to a partnership taxable year under proposed § 301.6231–1(f), the prohibition under section 6227(c) on filing an AAR after the mailing of a NAP no longer applies with respect to such taxable year.

One comment stated that the rule under proposed § 301.6231–1(f) lifting the prohibition on filing an AAR after a NAP is meaningless if the three-year period of limitations under section 6227(c) to file an AAR has already expired. The comment suggested that the language in proposed § 301.6231–1(f) be revised to provide that a NAP that has been withdrawn by the IRS has no effect for purposes of subchapter C or chapter 63 "except for suspension of the period of limitations under section 6227 as provided in § 301.6227–1(b)." The comment suggested a corresponding change to proposed § 301.6227–1(b) to provide that the period of limitations for filing an AAR is suspended while a NAP is outstanding. These suggestions have not been adopted.

First, section 6227 does not authorize the Treasury Department or the IRS to suspend the period of limitations within which a partnership may file an AAR. By way of contrast, other statutory provisions within subchapter C of chapter 63, such as section 6235(b) and section 6225(c)(7), do provide authority for the IRS to extend certain time periods. The absence of similar authority in section 6227 indicates the IRS does not have the authority to suspend the period of limitations under section 6227(c).

Moreover, because of the required timing of an examination under the centralized partnership audit regime, it is likely that in many cases when a NAP is withdrawn, there will still be time left on the period of limitations to file a timely AAR. In order for a NOPPA to be timely mailed, it generally must be issued within three years of the date on which the partnership return for such taxable year was filed or the return due date for the taxable year. Section 6235(a)(1). To allow for sufficient time to examine the partnership taxable year and to mail a timely NOPPA, the IRS will normally mail the NAP early on in that three-year period.

The period for filing a timely AAR under section 6227(c) runs concurrently with the three-year period for mailing a NOPPA. If after the issuance of the NAP a partnership finds that it agrees with the adjustments the IRS has raised with the partnership during the examination, the partnership may also find that it is more efficient for both the partnership and the IRS to file an AAR, rather than have those adjustments be made in the context of the partnership-level exam. In such a case, the partnership may inform the IRS of its desire to file an AAR, and the IRS can determine whether it is appropriate, in the view of the IRS, to withdraw the NAP in light of all of the facts and circumstances. It is incumbent upon the partnership to inform the IRS of its desire to file an AAR at the earliest possible point in the exam to ensure the NAP can be withdrawn with sufficient time in the section 6227(c) period to file an AAR.

Proposed § 301.6231–1(f) provided that a NAP that has been withdrawn by the IRS has no effect for purposes of subchapter C of chapter 63. Under § 301.6223–1(d)(2) and (e)(2), however, if the IRS withdraws a NAP pursuant to § 301.6231–1(f), any valid resignation or revocation of a partnership representative designation or designated individual appointment prior to the withdrawal of the NAP remains in effect. To conform these two sets of rules, the final regulations under § 301.6231–1(f) clarify that a withdrawn NAP has no effect for purposes of subchapter C of chapter 63 except as described in § 301.6223–1(d)(2) and (e)(2).

In addition, proposed § 301.6231–1(f) was revised to clarify that if the IRS withdraws a NAP or NOPPA, the NAP or NOPPA is treated as if it were never issued, in addition to the NAP or NOPPA not having any effect for purposes of subchapter C of chapter 63. This change conforms the language of the final regulations under § 301.6231–1(f) more closely with the language of section 6227(c).

Lastly, the final regulations under § 301.6231–1(f) clarify that the withdrawal of a NAP or NOPPA obviates the limitation under § 301.6222–1(c)(5) providing that a partner may not treat an item inconsistently after a NAP has been mailed with respect to a partnership taxable year. This change clarifies that if the IRS withdraws a NAP, a partner may treat an item inconsistently from how the item was treated on the partnership return after the withdrawal of the NAP.

7. *Assessment, Collection, and Payment of Imputed Underpayments*

Proposed § 301.6232–1(d)(1)(i) provided that a notice to a partnership that, on account of a mathematical or clerical error appearing on the partnership return or as a result of a failure by a partnership-partner to comply with section 6222(a), the IRS has adjusted or will adjust partnership-related items to correct the error or to make the items consistent under section 6222(a) and has assessed or will assess any imputed underpayment resulting from the adjustment is not considered an FPA under section 6231(a)(3). A petition for readjustment under section 6234 may not be filed with respect to such notice, and the limitations under proposed § 301.6232–1(c) (providing that generally no assessment can be made before the mailing of an FPA or, if applicable, a final court decision) do not apply to an assessment under § 301.6232–1(d)(1)(i). A partnership generally may request abatement of such assessments, but abatement is not available where an adjustment that is the subject of a notice described in proposed § 301.6232–1(d)(1)(i) is due to the failure of a partnership-partner to comply with section 6222(a). Proposed § 301.6232–1(d)(1)(ii).

One comment recommended that the regulations include a statement that the assessment procedures under § 301.6232–1(d)(1)(i) will be narrowly construed and applied. The comment suggested as an example that the regulations make clear that an assessment against a partner of a partnership-partner will not be treated as a mathematical or clerical error where the partner has reported the items at issue consistently with the partnership-partner, even though the partnership-partner may not have been consistent with the partnership in which it is a partner. These suggestions were not adopted.

Nothing in the statute indicates that section 6232(d) should be construed or applied to a particular degree. More specifically, a rule providing that section 6232(d) will be applied and construed narrowly would be vague and not give helpful guidance to taxpayers or the IRS. For these reasons, the comment's suggestion regarding construing and applying section 6232(d) narrowly was not adopted, and the regulations do not include a statement to that effect.

Regarding the comment's example of a rule that might reflect a narrow construction of the regulations, this suggestion was also not adopted. Proposed § 301.6232–1(d)(1)(iii) provided that in the case of a partnership-partner that has an election under section 6221(b) in effect, any tax resulting from an adjustment due to the partnership-partner's failure to comply with section 6222(a) may be assessed with respect to the reviewed year partners of the partnership-partner (or indirect partners of the partnership-partner). Such tax may be assessed in the same manner as if the tax were on account of a mathematical or clerical error appearing on the reviewed year partner's or indirect partner's return, except that the procedures under section 6213(b)(2) for requesting an abatement of such assessment do not apply. Proposed

§ 301.6232–1(d)(1)(iii). For all other partnership-partners, the IRS may assess an imputed underpayment against such partnership-partner on account of a failure to meet the consistency requirements under section 6222(a). See § 301.6232–1(d)(1)(i). The rule suggested by the comment thus would apply in the case of partnership-partners that have an election under section 6221(b) in effect and that fail to meet the requirements of section 6222(a).

Section 6232(d) provides that any adjustment on account of a failure of a partnership that is a partner in another partnership to meet the requirements of section 6222(a) shall be treated as an adjustment based on mathematical or clerical error, and rules similar to those under section 6213(b)(1) shall apply. In the case of partnership-partners that have an election in effect under section 6221(b), sections 6213 and 6232 allow the IRS to assess tax against the partners of such partnership-partner, without providing for a method to seek abatement of that assessment. Section 6232(d)(1)(B) provides that any adjustment on account of a failure by a partnership-partner to meet the consistency requirements under section 6222(a) is treated as an adjustment due to a mathematical or clerical error. Accordingly, an assessment that follows any adjustment to the partnership-partner's return pursuant to section 6232(d) is not subject to the prohibition under section 6213(a), which would otherwise require a notice of deficiency to be mailed to the taxpayer. Additionally, section 6232(d)(1)(B) explicitly provides that the provisions under section 6213(b)(2), permitting abatement of such assessment, do not apply. Therefore, the IRS may assess tax against the partners of a partnership-partner where the partnership-partner reported inconsistently and has an election in effect under section 6221(b) without first having to issue a notice of deficiency to the partner, and abatement of the assessment under section 6213(b)(2) is not available. Accordingly, no changes were made in response to this comment.

The same comment also suggested that the regulations explain how a taxpayer may properly challenge a mathematical or clerical error assessment made by the IRS under proposed § 301.6232–(d)(1)(ii)(B) where the normal abatement procedures are unavailable. This comment was not adopted.

In the case where an imputed underpayment has been assessed pursuant to § 301.6232–(d)(1)(ii)(B) against a partnership-partner that has not complied with section 6222(a), the partnership-partner may be able to file an AAR subsequent to that assessment in accordance with the provisions of sections 6222 and 6227. While the AAR may readjust the partnership-related items at issue which resulted in the imputed underpayment, in effect providing an opportunity to the partnership to contest the adjustments, such readjustments would be required to be taken into account by the partnership's partners pursuant to the rules under section 6227 because the readjustments would necessarily be adjustments that would not result in an imputed underpayment. See §§ 301.6227–1(a), 301.6227–3(a). Those readjustments may reduce the partner's tax in the reporting year, but nothing would give the partnership-partner the ability to claim a refund of any imputed underpayment paid. Accordingly, it is the burden of a partnership-partner to ensure it has complied with the provisions of section 6222(a), either by treating items consistently with the manner in which they are treated on the partnership return or by notifying the IRS of any inconsistency, in order to preclude an assessment of an imputed underpayment under section 6232(d)(1)(B).

Under § 301.6232–(d)(1)(ii)(B), a partnership-partner that has failed to comply with section 6222(a) may, prior to assessment, correct an inconsistency by filing an AAR under section 6227 or filing an amended partnership return and furnishing amended statements, as appropriate. To clarify that an AAR in such a situation is only permitted to the extent allowed under section 6227, including the timing restrictions under section 6227(c), the final regulations under § 301.6232–(d)(1)(ii)(B) provide that the partnership may file an AAR "in accordance with" section 6227.

In the situation where an imputed underpayment has been assessed pursuant to § 301.6232–(d)(1)(ii)(B) against a partnership-partner but such partnership-partner had in fact complied with the provisions of section 6222(a), the partnership may be able to seek a refund of the any imputed underpayment paid on the ground that the adjustment should not have been treated as being on account of mathematical or clerical error. Any ability to seek a refund in this situation, however, is outside the scope of these regulations. For these reasons, no changes were made to the regulations under § 301.6232–1(d) in response to this comment.

8. *Interest and Penalties Related to Imputed Underpayments*

Proposed § 301.6233(a)–1(a) provided that except to the extent provided in section 6226(c) and the regulations thereunder, in the case of a partnership adjustment for a reviewed year, a partnership is liable for interest and for any penalty, addition to tax, or additional amount as provided in proposed § 301.6233(a)–1(c). Proposed § 301.6233(a)–1(c)(1) provided that in accordance with section 6221(a), the applicability of any penalties, additions to tax, and additional amounts that relate to a partnership adjustment is determined at the partnership level as if the partnership had been an individual subject to tax imposed by chapter 1 of the Code for the reviewed year, and the imputed underpayment were an actual underpayment of tax or understatement for such year. Proposed § 301.6233(a)–1(c)(2) provided rules that apply in the case of penalties imposed under sections 6662, 6662A, and 6663 with respect to partnership adjustments.

A. *Defenses to penalties*

Proposed § 301.6233(a)–1(c)(1) provided that a partner-level defense (as described in § 301.6226–3(d)(3)) may not be raised in a proceeding of the partnership. As discussed in section 4.C.ii.I of this preamble, one comment recommended that the regulations clarify that a partnership that makes a push-out election will be able to avail itself of partner-level defenses at the partnership level. Another comment recommended that the regulations should provide a mechanism for partners to raise partner-level defenses prior to assessment, rather than requiring the partner to first pay the penalty and then file a claim for refund to raise the partner-level defense. The comment stated the post-payment process would be unduly burdensome on partners and that a pre-payment process would not impair the audit process for the IRS. These comments were not adopted.

Section 6233 provides that penalties are determined as if the partnership had been an individual subject to chapter 1 tax for the reviewed year. In determining whether a penalty applies during the partnership proceeding, therefore, it is only the conduct of the partnership that is relevant. Allowing the partnership or partners to raise partner-level defenses and requiring the IRS to evaluate a partner's facts and circumstances during the partnership proceeding contravenes that purpose of the centralized partnership audit regime. Such a rule would also significantly impair the IRS's audit process. As discussed in section 3 of this preamble regarding the determination of imputed underpayments, an examination under the centralized partnership audit regime is a centralized proceeding wherein partner tax attributes are generally unaccounted for. Requiring the IRS to evaluate the specific facts and circumstances of each partner undermines the centralized nature of the proceeding and could significantly delay the examination.

Moreover, section 6233 treats an imputed underpayment as if it were an actual underpayment or understatement for the reviewed year. A partner-level defense by itself cannot reduce the amount of an imputed underpayment. Even if the partner-level defense were sufficient to provide penalty relief, that relief does not affect the amount of the imputed underpayment. A partner-level defense can only be relevant in situations where the imputed underpayment is reduced because a partner takes into account the adjustments that resulted in the imputed underpayment, for example as part of modification, or where there is no partnership-level liability for the imputed underpayment because of an election by the partnership under section 6226 to have its partners take into account the adjustments. Only upon taking into account the adjustments will a partner know the amount of the penalty the partner is liable for and therefore whether a defense to the penalty is needed. Accordingly, comments suggesting that the partnership be permitted to raise partner-level defenses to reduce a penalty imposed against the partnership were not adopted. For discussion of partner-level defenses in the context of modification and the push out election, see sections 3.C and 4.C.ii.I of this preamble.

B. *Determining the Portion of the Imputed Underpayment to Which the Penalty Applies*

Proposed § 301.6233(a)–1(c)(2)(ii) provided rules for determining the portion of the imputed underpayment to which a penalty applies where there exists (1) at least one adjustment with respect to which no penalty has been imposed and at least one adjustment with respect to which a penalty has been imposed or (2) at least two adjustments with respect to which penalties have been imposed and the penalties have different rates. In general, to determine the portion of the imputed underpayment to which the penalty applies, all partnership adjustments that resulted in the imputed underpayment were grouped together according to whether they were adjustments with respect to which a penalty has been imposed and according to rate of penalty. The adjustments were then multiplied by the rate that applied in calculating the imputed underpayment and added together to produce the portion of the imputed underpayment to which the penalty applies.

One comment observed that under proposed § 301.6233(a)–1(c)(2)(ii)(D) and (E) negative or decreasing adjustments were applied first to adjustments to which no penalties have been imposed and then to adjustments subject to the lowest penalty and suggested that this rule applies such adjustments in a manner that maximizes penalties. The comment recommended that the proposed regulations be revised to group adjustments by character for purposes of calculating the portion of the imputed underpayment subject to the penalty. This comment was partially adopted.

Section 6233(a)(3) provides that any penalty, addition to tax, or additional amount shall be determined at the partnership level as if such partnership had been an individual subject to tax under chapter 1 for the reviewed year and the imputed underpayment were an actual underpayment (or understatement) for such year. Section 6662, which imposes accuracy-related penalties on underpayments, applies to the portion of an underpayment attributable to certain circumstances such as negligence or disregard of rules or regulations or a substantial understatement of income tax. To determine the portion of an imputed underpayment to which a penalty applied, proposed § 301.6233(a)–1(c) applied rules similar to the ordering rules under § 1.6664–3 by disregarding the grouping and subgrouping rules under § 301.6225–1 and by applying decreasing adjustments to offset any positive adjustments to which no penalty was imposed, followed by adjustments to which 20 a percent penalty was imposed, and so forth. While the rules under proposed § 301.6233(a)–1(c) were consistent with the rules § 1.6664–3, this consistency did not allow for important distinctions between the calculation of an underpayment and the calculation of the imputed underpayment. For example, in computing an imputed underpayment, negative adjustments are generally not taken into consideration in determining the imputed underpayment unless the negative adjustment is in a grouping or subgrouping under § 301.6225–1 that results in a net positive adjustments because only net positive adjustments are totaled to determine the total netted partnership adjustment, which forms the base for an imputed underpayment prior to application of any adjustments to credits.

Section 301.6233(a)–1(c) has been revised to account for these distinctions and to apply the ordering rules under § 1.6664–3 within each grouping or subgrouping determined in accordance with § 301.6225–1. Because the revised rule uses the groupings and subgroupings determined under section 6225, in general the character of the adjustments within each grouping will be the same, as suggested by the comment. See § 301.6225–1(d). The revised rule maintains the treatment of an imputed underpayment as if it were an actual underpayment or understatement, but also respects the framework for calculating the imputed underpayment established under section 6225 and the regulations thereunder. The revised rule is also more streamlined, removes references to specific penalty rates to allow for any future statutory changes, and eliminates unnecessary steps and terminology. For example, the revised rule eliminates the term decreasing adjustment and instead uses the term "negative adjustment" as defined in § 301.6225–1(d)(2).

Section 301.6233(a)–1(c)(2) provides the rules for calculating penalties under section 6662, 6662A or 6663. Section 301.6233(a)–1(c)(2)(iii) provides the rules for applying negative adjustments. As a threshold matter, the rule provides that adjustments that do not result in an imputed underpayment and adjustments that are disregarded in determining the imputed underpayment are not taken into account when determining the amount of penalties. The rule generally provides that if any grouping or subgrouping as determined under § 301.6225–1 or § 301.6225–2 contains a negative adjustment and at least one positive adjustment subject to penalty, the negative adjustment is first used to offset any positive adjustment to which no penalties have been imposed within that grouping or subgrouping. If any amount of negative adjustments remains after offsetting positive adjustments to which no penalties have been imposed, the remaining amount of negative adjustment is applied within the grouping or subgrouping against positive adjustments to which a penalty has been imposed at the lowest rate. If after this step, any amount of negative adjustment remains, the process is repeated iteratively with respect to higher rates in ascending order of rate. Additionally, the regulations provide special rules for the application of negative credits. All adjustments to credits and adjustments treated as adjustments to credits are treated as grouped in the credit grouping without regard to whether the adjustments were subgrouped for purposes of § 301.6225–1 (or § 301.6225–2 in the case of modification). If negative credit adjustments remain after the application of negative adjustments in accordance with § 301.6233(a)–1(c)(2)(iii)(A), negative credit amounts are first applied to reduce the portion of the imputed understatement not subject to penalty then to reduce the portion of the imputed understatement subject to penalty iteratively in ascending order of rate.

Section 301.6233(a)–1(c)(2)(ii) provides the mechanical steps for calculating any penalty after any negative adjustments have been applied in accordance with 301.6233(a)–1(c)(2)(iii). The steps are applied separately for each particular penalty imposed with respect to the adjustments.

First, all adjustments that are not adjustments to credits or treated as adjustments to credits that are subject to a particular penalty and to which the highest rate of tax in effect for the reviewed year under section 1 or 11 was applied are totaled. Second, the total from step one is multiplied by the highest rate of tax in effect for the reviewed year under section 1 or 11. Third, the first and second steps are repeated for any other tax rates used to calculate the imputed underpayment, for example, rates applied as part of the modification process. Fourth, all of the results from completing the first three steps are totaled. Fifth, all adjustments in the credit grouping are netted. The total from step four is increased by any remaining positive adjustments to credits or decreased by negative adjustments to credits in accordance with the rules in § 301.6233(a)–1(c)(2)(iii). This result is the portion of the imputed underpayment subject to penalty. Sixth, the total from step five is multiplied by the penalty rate for the penalty to provide the total penalty amount.

C. *Interest on penalties, additions to tax, and additional amounts*

As discussed earlier in section 4.C.ii.III. of this preamble, one comment recommended that the regulations adopt a bifurcated approach under which interest would run on tax from the due date of the return without regard to extensions while interest on penalties would run from the due date of the return including any extensions. The comment recommended that proposed § 301.6233(a)–1(b) be revised to provide that the interest imposed on penalties and additions to tax (other than assessable penalties) on an imputed underpayment begins on the day after the due date of the partnership return (including any extensions). This comment was partially adopted.

Proposed § 301.6233(a)–1(b) provided rules regarding interest on an imputed underpayment, but did not provide rules regarding interest on penalties, additions to tax, or additional amounts with respect to the imputed underpayment. In light of the comment, the final regulations under § 301.6233(a)–1(b) clarify that interest with respect to penalties, additions to tax, or additional amounts with respect to an imputed underpayment determined under the rules of § 301.6233(a)–1(c) is the interest that would be imposed under chapter 67 of the Code treating the partnership return for the reviewed year as the return of tax to with respect to which such penalty is imposed. To the extent the comment was suggesting a rule that is not consistent with chapter 67 of the Code, the comment was not adopted.

9. *Judicial Review of Partnership Adjustments*

Section 6234(a) provides that a partnership may file a petition in the Tax Court, a United States district court, or the Court of Federal Claims, within 90 days of the date on which an FPA is mailed under section 6231. A petition under section 6234 may be filed in a district court or the Court of Federal Claims only if the partnership filing the petition makes a jurisdictional deposit in accordance with section 6234(b). The jurisdictional deposit is the amount of (as of the date of the filing of the petition) any imputed underpayment (as shown on the FPA) and any penalties, additions to tax, and additional amounts with respect to such imputed underpayment. See proposed § 301.6234–1(b).

Under proposed § 301.6226–1(e), a partnership that has made an election under § 301.6226–1 is not precluded from filing a petition under section 6234(a). One comment stated that the proposed regulations provided no explanation as to how or whether the deposit amount under section 6234(b) may or should be adjusted to reflect a push out election under section 6226. The comment recommended the regulations should provide a mechanism that would enable a partnership to file a petition in a district court or Court of Federal Claims and still make an election under section 6226, without creating the risk of having tax on the partnership adjustments paid twice. The comment suggested that one possible approach might be to reduce the deposit amount by the amount that would be reported by partners that receive statements based on an election under section 6226. The comment suggested that another approach might be to provide a clear mechanism for having the partnership obtain a refund of the imputed tax deposit before any amounts are paid by the push out partners under section 6226.

The comment's suggestion regarding whether a partnership can make an election under section 6226 and also file a petition under section 6234 is addressed in section 4.A.v of this preamble. With respect to the comment's suggestion that the partnership deposit be reduced by the amount of the imputed underpayment that would be reported by partners that receive 6226 statements, this suggestion was not adopted. The plain language of section 6234(b)(1) makes clear that a petition for readjustment may be filed in district court or the Court of Federal Claims only if the partnership makes a jurisdictional deposit. The statute does not provide authority to alter this jurisdictional requirement by regulation for any partnerships, including partnerships that make the election under section 6226. The election under section 6226 is made with respect to an imputed underpayment, and therefore the deposit required under section 6234(b)(1) must equal the entire imputed underpayment to which the election relates (in addition to penalties and interest). An election under section 6226 is not with respect to a portion of an imputed underpayment; likewise, a deposit under section 6234(b)(1) cannot be for a portion of the imputed underpayment.

Moreover, a rule allowing for a reduction in the deposit amount for those partners that are furnished statements under section 6226 would not work as a practical matter. First, to the extent the comment was suggesting a rule that allows a reduction of the deposit equal to each partner's share of the adjustments, this rule would reduce the deposit amount to zero, provided all partners properly were furnished statements. This would effectively eliminate the deposit requirement for partnerships making an election under section 6226. There is nothing in the statute that allows any partnership, including a partnership making the election under section 6226, to be exempt from the jurisdictional requirements of section 6234(b).

Second, to the extent the comment was suggesting a rule that would reduce the deposit by the tax paid by partners furnished statements, this rule would also not work given the timing of when statements must be furnished. Pursuant to § 301.6226–2(b)(1), all statements must be furnished no later than 60 days after the date all of the partnership adjustments to which the statement relates are finally determined. Partnership adjustments are finally determined upon the later of the expiration of the time to file a petition under section 6234, or if a petition under section 6234 is filed, the date when the court's decision becomes final. The deposit under section 6234(b)(1) must be made when a petition is filed. The deposit cannot be reduced at the time by the amount the tax partners will pay because statements are not furnished until later in the process and even then the tax is not known until the partner files its return for the reporting year, which depending on timing of the FPA could be more than a year after the deadline for petitioning a court under section 6234(a). For these reasons, the comment's suggestion regarding a reduction in the amount of the deposit were not adopted, and the regulations were not changed in response to those suggestions.

With respect to the comment's recommendation that there be a clear mechanism for having the partnership obtain a refund of the tax deposit, the comment's concern that the deposit made in conjunction with a section 6226 election would result in double taxation is misplaced; however, the regulations were revised to clarify operation of the deposit rules. Under § 301.6234–1(c), the amount deposited under section 6234(b)(1) is not treated as a payment of tax (except with respect to chapter 67 of the Code). If the partnership makes a valid election under section 6226, no amount may be assessed against the partnership, and instead the partners must take the adjustments into account. To conform these two sets of rules, the final regulations under § 301.6234–1(e) clarify that a partnership is entitled to a return of any deposit that is in an amount in excess of the amount assessed against the partnership. To obtain a return of this excess deposit, the partnership must notify the IRS in writing in accordance with forms, instructions, and other guidance prescribed by the IRS.

10. *Definitions and Special Rules*

Five comments were received regarding the definition of pass-through partner under proposed § 301.6241–1, the rules regarding cease to exist determinations in accordance with proposed § 301.6241–3, and the rules regarding the nondeductibility of payments made under the centralized partnership audit regime as provided in proposed § 301.6241–4.

A. *Definitions*

Proposed § 301.6241–1 defined certain terms for purposes of the centralized partnership audit regime. Proposed § 301.6241(a)(5) defined a "pass-through partner" as "a pass-through entity that holds an interest in a partnership" and a "pass-through entity" to include a partnership described in § 301.7701–2(c)(1), among other types of entities. A partnership as described in § 301.7701–2(c)(1) means a business entity that is not a corporation under § 301.7701–2(b) and that has at least two members.

Section 6241(1) defines the term partnership to mean any partnership required to file a return under section 6031(a), which applies to every partnership as defined in section 761(a). Certain unincorporated organizations may elect under section 761(a) to not be subject to subchapter K. Proposed § 301.6241–5(a) provided that an entity that files a partnership return for any taxable year is subject to the centralized partnership audit regime with respect to such taxable year even if it is determined that the person filing the partnership return was not a partnership for such taxable year. Proposed § 301.6241–5(c)(2) provided an exception from this rule for entities for which a partnership return was filed for the sole purpose of making the election described in section 761(a).

One comment suggested there was an inconsistency between the definition of "pass-through partner" under proposed

§ 301.6241–1(a)(5), which defines partnership by reference to § 301.7701–2(c)(1), and the exception under proposed § 301.6241–5(c)(2) for entities that have elected out of subchapter K. The comment observed that the definition of partnership under § 301.7701–2(c)(1) arguably includes business organizations that have elected out of subchapter K under section 761(a). As a result, the term "pass-through partner" would include entities that may not be partnerships within the meaning of section 6031(a) because those entities are required to file partnership returns. To remedy this inconsistency, the comment recommended that the definition of "pass-through partner" in proposed § 301.6241–1(a)(5) be revised to eliminate the reference to § 301.7701–2(c)(1) and instead refer to the definition of "partnership" under section 6241(1), that is, "a partnership required to file a return under section 6031(a)."

The Treasury Department and the IRS agree with the comment that there was an inconsistency in the definition of "pass-through partner." The approach recommended in the comment was adopted and remedied this inconsistency. The revision clarifies that business organizations that have elected out of subchapter K are not "pass-through partners." This change is consistent with the definition of "partnership" under section 6241(1). Accordingly, the definition of "pass-through partner" under § 301.6241–1(a)(5) refers to a partnership that is required to file a return under section 6031(a), consistent with the definition of partnership under section 6241(1).

One comment was received regarding the application of the centralized partnership audit regime to pass-through partners as a result of the proposed regulations. Proposed § 301.6226–3 provided that a pass-through partner that is furnished a statement described in § 301.6226–2 must comply with proposed § 301.6226–3(e). The term "pass-through partner" includes partnerships that made an election under section 6221(b) for the taxable year. One comment suggested that there may be uncertainty with respect to how a partnership that has elected out of the centralized partnership audit regime complies with the requirements of the regime. For example, the elected out partnership may not have designated a partnership representative prior to receiving a statement described in § 301.6226–2. The comment recommended that the Treasury Department and the IRS should issue further guidance on elected out partnerships, including providing guidance that confirms an elected out partnership receiving a statement described in § 301.6226–2 and complying with § 301.6226–3(e) will not be deemed subject to the centralized partnership audit regime for other purposes.

A partnership that has made an election under section 6221(b) is not subject to the requirements of the centralized partnership audit regime as a partnership. For example, the partnership is not required to select a partnership representative. A partnership that has made an election under section 6221(b) may still be subject to the requirements of the centralized partnership audit regime in its capacity as a partner in a partnership that is subject to the centralized partnership audit regime. For example, sections 6222, 6223, 6226(b)(4)(C), 6241(7), and the regulations thereunder apply to all partners in a partnership subject to the centralized partnership audit regime, including any pass-through partner. Pass-through partners that must comply with these provisions include partnerships subject to the centralized partnership audit regime as partnerships as well as those that made an election under 6221(b) and other entities such as S corporations and trusts.

For example, under § 301.6226–3(e) a pass-through partner that receives a push out statement from an audited partnership must furnish statements to its owners or, if it fails to furnish statements to its owners, pay an imputed underpayment. This rule applies regardless of whether or not the pass-through partner is subject to the centralized partnership audit regime in its capacity as a partnership. Nothing in proposed § 301.6226–3(e) indicated that a pass-through partner not otherwise subject to the centralized partnership audit regime becomes subject to other provisions of the regime simply because it must comply with § 301.6226–3(e) in its capacity as a partner. Therefore, the Treasury Department and the IRS have declined to provide further guidance regarding the application of the centralized partnership audit regime to partnerships that have made an election out of the centralized partnership audit regime under section 6221(b).

B. *Treatment where a partnership ceases to exist*

Several comments were received regarding the treatment of partnership adjustments where a partnership ceases to exist under section 6241(7). The comments pertained to two general areas: (1) the determination that a partnership has ceased to exist; and (2) the definition of "former partners" under proposed § 301.6241–3(d).

i. Determination that Partnership has Ceased to Exist

Proposed § 301.6241–3 provided that, if the IRS determined a partnership ceased to exist (as described in proposed § 301.6241–3(b)(2)) before the partnership adjustments take effect (as described in proposed § 301.6241–3(c)), the partnership adjustments are taken into account by the former partners (as described in proposed § 301.6241–3(d)) in accordance with proposed § 301.6241–3(e). Proposed § 301.6241–3(b)(1) provided that a determination that a partnership had ceased to exist was within the sole discretion of the IRS, and the IRS was not required to determine that a partnership has ceased to exist, even if the partnership meets the definition of cease to exist in proposed § 301.6241–3(b)(2).

One comment stated that the language in proposed § 301.6241–3(b)(1) and (2) was ambiguous and allowed for excessive latitude and a potential for abuse of discretion in making such a cease-to-exist determination. The comment suggested that the IRS, upon formal request, should be compelled to consider the facts and circumstances of a cease-to-exist determination.

If the IRS receives a letter requesting that the IRS determine that a specific partnership has ceased to exist and providing detailed facts to support such a determination, the IRS will consider the circumstances in the letter and whether it is in the interest of sound tax administration to determine that the partnership has ceased to exist. The IRS, however, will retain its discretion as to whether to determine that a partnership has ceased to exist, even if the facts would indicate that the partnership meets the criteria in § 301.6241–3(b)(1)(i) and (ii). The cease-to-exist rules are inherently related to collection issues with respect to amounts not paid as a result of an administrative proceeding under the centralized partnership audit regime. Where a taxpayer or partnership properly owes amounts to the U.S. government, the IRS should be provided broad latitude, within the statutory limits, to ensure that such amounts are ultimately collected. To that end, it is administratively necessary for the IRS to retain its discretion to make a determination about whether a partnership ceases to exist. Cease to exist is not the only collection tool available to the IRS. The Treasury Department and the IRS therefore decline to create an additional unnecessary administrative rule that would compel the IRS to make a determination if requested by a taxpayer. Accordingly, no changes were made to the final regulations as a result of this comment.

Although the regulations do not require the IRS to make a cease-to-exist determination upon a formal request, the regulations have been revised to provide that a partnership does not cease to exist for purposes of section 6241(7) without the IRS determining the partnership has ceased to exist. Under proposed § 301.6241–3(b), cease to exist was defined as a situation where the partnership terminates under section 708(b)(1) or is unable to pay, in full, any amount due under subchapter C of chapter 63. It was not clear from the proposed regulations whether a partnership meeting those criteria could cease to exist without an accompanying determination to that effect by the IRS. The final regulations under § 301.6241–3(b) make clear that a partnership ceases to exist if the partnership terminates within the meaning of section 708(b)(1) or the partnership does not have the ability to pay, in full, any amount due under subchapter C of chapter 63, but only if the IRS makes a determination that the partnership has ceased to exist under one of those two situations. The final regulations provide certainty to both taxpayers and the IRS about when a partnership ceases to exist and make the cease-to-exist rules more administrable for the IRS by eliminating any confusion about whether a partnership has ceased to exist.

Proposed § 301.6241–3(b)(1) provided that if the IRS determines that a partnership ceased to exist, the IRS will notify the partnership and its former partners within 30 days of such determination. The final regulations clarify that a failure by the IRS to send a notification required under § 301.6241–3(b)(1) to the former partners of the partnership does not invalidate a determination that the partnership has ceased to exist. In addition, one comment suggested that the IRS should also notify the partnership representative (and designated individual, if applicable). To the extent the comment is referring to the partnership representative of the audited partnership, the comment has been adopted. In the case of a determination that the partnership has ceased to exist, the IRS will notify the partnership, the former partners of the partnership, and when an audited partnership has ceased to exit, the partnership representative (and designated individual, if applicable) for the reviewed year. This rule is consistent with the other notification provisions throughout the centralized partnership audit regime, which provide notification to the partnership representative and designated individual, if applicable. To the extent the comment was referring to a partnership that received a push out statement, the comment was not adopted. The partnership representative from the reviewed year or any other year of a partnership that received a push out statement has no connection to the unpaid, current liability and notification would not be appropriate or necessarily beneficial to the partnership. In addition, there would be administrative complexity for the IRS in determining the appropriate partnership representative for a partnership partner to notify because the IRS will only have been in contact with the partnership representative of the audited partnership, not partnership representatives of other partnerships not subject to an administrative proceeding.

The same comment also suggested that the partnership should be allowed to appeal a determination that the partnership has ceased to exist to the IRS Office of Appeals within 60 days of the receipt of the IRS's determination that the partnership has ceased to exist. This comment was not adopted. As discussed in section 11 of this Summary of Comments and Explanation of Revisions, any guidance regarding the availability of review by the IRS Office of Appeals will be provided outside of these regulations to preserve flexibility and allow the IRS to revise its procedures as it gains experience with the centralized partnership audit regime.

Former proposed § 301.6241–3(b)(2)(iii) had provided that the IRS could not determine that a partnership ceased to exist with respect to a partnership adjustment after the expiration of the period of limitations on collection applicable to the amount due resulting from such adjustment. One comment observed that the reference to the "period of limitations on collection applicable to the amount due" did not specify whether the period of limitations related to the partnership or the partner. In the August 2018 NPRM, former proposed § 301.6241–3(b)(2)(iii) was revised to provide that the relevant period of limitations is the period of limitations on collection applicable to the assessment made against the partnership for the amount due resulting from such adjustment. Because the plain language of proposed § 301.6241–3(b)(2)(iii) resolves the ambiguity identified by the comment, no further changes were made in the final regulations in response to this comment.

ii. Definition of Former Partners

Proposed § 301.6241–3(d) defined the term "former partners" as the adjustment year partners of the partnership that ceased to exist, unless there are no adjustment year partners in which case the former partners are the partners of the partnership during the last taxable year for which a partnership return under section 6031 was filed with respect to such partnership. If the IRS determined that the partnership ceased to exist prior to the partnership adjustments taking effect, the former partners of the partnership take into account the partnership adjustments as if the partnership had made an election under section 6226 to push out the adjustments to the former partners. See proposed § 301.6241–3(e).

One comment expressed concern that, once a partnership was placed under examination, the partners could transfer their partnership interests to defunct corporations or otherwise uncollectible entities such that the IRS would be unable to collect from the "former partners" under the provisions of proposed § 301.6241–3. Similarly, the comment expressed concern that if the partnership was able to pay some but not all of the amounts due under the centralized partnership audit regime and the IRS did not determine that the partnership had ceased to exist, the partners would benefit from the improper treatment of the items and the partnership will not have paid the amounts owed as a result of the adjustments. The comment suggested that the final regulations add the ability for the IRS to assess the transferees of the former partners and the owners of the partnership.

Under section 6232(f), as added by the TTCA after the comment was received, if the partnership does not pay any amount of the imputed underpayment or specified similar amount (as defined in section 6232(f)(2)) within 10 days after the date on which the IRS provides notice and demand for such payment, the IRS may assess upon each partner of the partnership (as of the close of the adjustment year) or, if the partnership has ceased to exist, the former partners of the partnership, a tax equal to such partner's proportionate share of such amount (including any penalties and interest). Section 6232(f) provides the IRS with the ability to directly make assessments against the partners of a partnership that fails to pay an imputed underpayment or specified similar amount much like the assessment authority suggested by the comment. In addition, nothing in proposed § 301.6241–3 limits or otherwise modifies the IRS's existing tools under the Code, related case law, or any other law with respect to transferee liability. Accordingly, no changes were made to the final regulations in response to this comment. For these reasons, the clarification recommended by the comment was not adopted.

Another comment suggested that the definition of "former partners" under proposed § 301.6241–3(d) should include the reviewed year partners of the partnership that has ceased to exist in situations where the partnership has made an election under section 6226. Proposed § 301.6241–3(b)(2)(i)(A) provided that the IRS may not determine that a partnership has ceased to exist solely because the partnership has a valid election under section 6226 in effect with respect to any imputed underpayment. If the partnership makes a valid election under section 6226, the partnership is not liable for the imputed underpayment to which the election relates. See section 6226(a) and § 301.6226–1(b)(2). As a result, the IRS cannot determine the partnership ceases to exist with respect to that imputed underpayment (see § 301.6241–3(b)(2)), and the cease to exist provisions under proposed § 301.6241–3 will not apply to such partnership with respect to that imputed underpayment. Therefore, this comment was not adopted.

Although this comment was not adopted, a clarification was made to the definition of "former partners" under proposed § 301.6241–3(d)(1)(i). As stated earlier in this section of the preamble, the term "former partners" was defined under proposed § 301.6241–3(d)(1)(i) as the partners for the adjustment year that corresponds to the partnership taxable year to which the partnership adjustment relates. The final regulations under § 301.6241–3(d)(1)(i) clarify that the term "former partners" means, for a partnership that has ceased to exist, the partners of the partnership during the adjustment year (as defined in § 301.6241–1(a)(2)) that corresponds to the reviewed year for which the adjustments were made.

C. *Payments nondeductible*

Proposed § 301.6241–4 provided that no deduction is allowed under subtitle A of the Code for any payment required to be made by a partnership under the centralized partnership audit regime, which includes any imputed underpayment or any interest, penalties, additions to tax, or additional amounts with respect to an imputed underpayment. Former proposed § 301.6225–1(a) provided that a partnership's expenditure for the imputed underpayment "and the adjustments that result in the imputed underpayment" are taken into account by the partnership in accordance with § 301.6241–4." One comment suggested that, because of the cross reference to § 301.6241–4 in former proposed § 301.6225–1(a), that the regulations under § 301.6241–4 be revised to address the treatment of the adjustments that result in the imputed underpayment. This comment was not adopted.

Proposed § 301.6241–4 addressed the deductibility of payments required under the centralized partnership audit regime and did not address the treatment of adjustments that were taken into account in determining the amount of such payments. In the August 2018 NPRM, former proposed § 301.6225–1(a) was revised to remove the erroneous cross-reference to the adjustments being taken into account under § 301.6241–4. To the extent the comment was recommending that revision, the comment was addressed by the revisions in the August 2018 NPRM. To the extent the comment was recommending guidance on the treatment of partnership adjustments in the context of adjusting tax attributes, those rules were provided in proposed §§ 301.6225–4 and 301.6226–4.

D. *Extension to entities filing partnership returns*

Proposed § 301.6241–5(c)(2) provided that the centralized partnership audit regime would not apply to a taxable year for which a partnership return was filed for the sole purpose of making an election described in section 761(a) (regarding election out of subchapter K for certain unincorporated organizations). The final regulations under § 301.6241–5(c)(2) retain this rule but clarify that the centralized partnership audit regime will not apply to a taxable year in which a valid section 761(a) election is made. This change was made to clarify that the election under section 761(a) must be valid in order for the rules under § 301.6241–5 not to apply to a partnership return that is filed with respect to a taxable year.

11. *Comments Concerning IRS Appeals Office*

Several comments were received regarding the interaction between the centralized partnership audit regime and the IRS Appeals. For example, certain comments suggested the regulations clarify the rules regarding a partnership's ability to raise various issues and determinations with IRS Appeals, including the timing of any involvement by IRS Appeals.

Procedures governing IRS Appeals are beyond the scope of these regulations. Accordingly, except as described in sections 3.B.i., 3.B.vii., 4.B.v., and 10.B.i. of this preamble, neither this preamble nor the regulations address IRS Appeals procedures in the context of the centralized partnership audit regime. These procedures are expected to be addressed in future guidance.

12. *Effect of Provisions Enacted Under the Tax Cuts and Jobs Act*

One comment suggested that the final regulations include guidance on the effect of the new partnership-related provisions of the Tax Cuts and Jobs Act, formally known as "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," Public Law 115–97 (TCJA), including examples of how adjustments to partnership-related items and tax attributes specific to the new TCJA provisions are treated under sections 6225 and 6226 by partnerships and their partners.

The Treasury Department and the IRS have determined not to provide guidance on how the provisions of the TCJA, including any partnership-related provisions, interact with the centralized partnership audit regime. The TCJA provisions are substantive tax rules that work independently of the procedural rules of the centralized partnership audit regime. Therefore, no change would necessarily be required as a result of these substantive provisions. However, as the Treasury Department and the IRS continue to gain experience with the centralized partnership audit regime and implement rules under the new TCJA provisions, guidance will be issued if it is later determined that doing so would be appropriate. For these reasons, this comment was not adopted.

13. *Effective Date of Centralized Partnership Audit Regime*

Several comments recommended that the effective date of the centralized partnership audit regime be delayed. These comments were not adopted because the effective date for the statutory provisions governing the centralized partnership audit regime is established by statute. See BBA section 1101(g).

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

Because the final regulations would not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

Drafting Information

The principal authors of these final regulations are Jennifer M. Black of the Office of the Associate Chief Counsel (Procedure and Administration), Steven L. Karon of the Office of the Associate Chief Counsel (Procedure and Administration), and Joy E. Gerdy Zogby of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries for §§ 301.6221(a)–1, 301.6222–1, 301.6225–1, 301.6225–2, 301.6225–3, 301.6226–1, 301.6226–2, 301.6226–3, 301.6227–1, 301.6227–2, 301.6227–3, 301.6231–1, 301.6232–1, 301.6233(a)–1, 301.6233(b)–1, 301.6234–1, 301.6235–1, 301.6241–1, 301.6241–2, 301.6241–3, 301.6241–4, 301.6241–5, and 301.6241–6 in numerical order to to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6221(a)–1 also issued under 26 U.S.C. 6221.

Section 301.6222–1 also issued under 26 U.S.C. 6222 and 6223.

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Section 301.6225–1 also issued under 26 U.S.C. 6225.

Section 301.6225–2 also issued under 26 U.S.C. 6223 and 6225.

Section 301.6225–3 also issued under 26 U.S.C. 6225.

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Section 301.6226–1 also issued under 26 U.S.C. 6223 and 6226.

Section 301.6226–2 also issued under 26 U.S.C. 6226.

Section 301.6226–3 also issued under 26 U.S.C. 6226.

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Section 301.6227–1 also issued under 26 U.S.C. 6223 and 6227.

Section 301.6227–2 also issued under 26 U.S.C. 6227.

Section 301.6227–3 also issued under 26 U.S.C. 6227.

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Section 301.6231–1 also issued under 26 U.S.C. 6231.

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Section 301.6232–1 also issued under 26 U.S.C. 6232.

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Section 301.6233(a)–1 also issued under 26 U.S.C. 6233.

Section 301.6233(b)–1 also issued under 26 U.S.C. 6233.

Section 301.6234–1 also issued under 26 U.S.C. 6234.

Section 301.6235–1 also issued under 26 U.S.C. 6235.

Section 301.6241–1 also issued under 26 U.S.C. 6241.

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Section 301.6241–2 also issued under 26 U.S.C. 6241.

Section 301.6241–3 also issued under 26 U.S.C. 6241.

Section 301.6241–4 also issued under 26 U.S.C. 6241.

Section 301.6241–5 also issued under 26 U.S.C. 6241.

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Section 301.6241–6 also issued under 26 U.S.C. 6241.

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Par. 2. Section 301.6221(a)–1 is added to read as follows:

§ 301.6221(a)–1 Determination at partnership level.

(a) *In general*. Except as otherwise provided under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and the regulations in this part, any adjustment to a partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) is determined, any tax imposed by chapter 1 of the Internal Revenue Code (Code) attributable thereto is assessed and collected, and the applicability of any penalty, addition to tax, or additional amount that relates to an adjustment to any partnership-related item is determined at the partnership level under subchapter C of chapter 63.

(b) *Legal and factual determinations at the partnership level*. Except as otherwise provided under subchapter C of chapter 63, any legal or factual determinations underlying any adjustment or determination made in accordance with paragraph (a) of this section are also determined at the partnership level under subchapter C of chapter 63. For instance, determinations under this paragraph (b) include any determinations necessary to calculate the imputed underpayment or any modification of the imputed underpayment under section 6225 and the period of limitations on making adjustments under subchapter C of chapter 63.

(c) *Applicability date*–(1) *In general*. Except as provided in paragraph (c)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 3. Section 301.6222–1 is added to read as follows:

§ 301.6222–1 Partner's return must be consistent with partnership return.

(a) *Consistent treatment of partnership-related items*–(1) *In general*. The treatment of partnership-related items (as defined in § 301.6241–1(a)(6)(ii)) on a partner's return must be consistent with the treatment of such items on the partnership return in all respects, including the amount, timing, and characterization of such items. A partner has not satisfied the requirement of this paragraph (a) if the treatment of the partnership-related item on the partner's return is consistent with how such item was treated on a schedule or other information furnished to the partner by the partnership but inconsistent with the treatment of the item on the partnership return actually filed. For rules relating to the election to be treated as having reported the inconsistency where the partner treats a partnership-related item consistently with an incorrect schedule or other information furnished by the partnership, see paragraph (d) of this section. For purposes of this section, the term *partner's return* includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed by the partner with respect to any tax imposed by the Internal Revenue Code (Code).

(2) *Partner that is a partnership with an election in effect under section 6221(b)*. The rules of this section apply to all partners, including a partnership-partner (as defined in § 301.6241–1(a)(7)) that has an election in effect under section 6221(b) for any taxable year. Accordingly, unless the requirements of paragraph (c) of this section are satisfied, a partnership-partner must treat partnership-related items of a partnership in which it is a partner consistent with the treatment of such items on the partnership return filed by the partnership in which it is a partner.

(3) *Partnership does not file a return*. A partner's treatment of a partnership-related item attributable to a partnership that does not file a return is per se inconsistent.

(4) *Treatment of items on a partnership return*. For purposes of this section, the treatment of a partnership-related item on a partnership return includes–

(i) The treatment of such item on the partnership's return of partnership income filed with the Internal Revenue Service (IRS) under section 6031, and any amendment or supplement thereto, including an administrative adjustment request (AAR) filed pursuant to section 6227; and

(ii) The treatment of such item on any statement, schedule or list, and any amendment or supplement thereto, filed by the partnership with the IRS, including any statements filed pursuant to section 6226.

(5) *Examples.* The following examples illustrate the rules of this paragraph (a). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63 of the Code (subchapter C of chapter 63), and each partnership and its partners are calendar year taxpayers, unless otherwise stated.

(i) *Example 1*. A is a partner in Partnership during 2018 and 2019. In December 2018, Partnership receives an advance payment for services to be performed in 2019 and reports this amount as income on its partnership return for 2018. A includes its distributive share of income from the advance payment on A's income tax return for 2019 and not on A's income tax return for 2018. A has not satisfied the requirements of paragraph (a) of this section because A's treatment of the income attributable to Partnership is inconsistent with the treatment of that item by Partnership on its partnership return.

(ii) *Example 2*. B is a partner in Partnership during 2018. Partnership incurred start-up costs before it was actively engaged in its business. Partnership capitalized these costs on its 2018 partnership return. B deducted his distributive share of the start-up costs on B's 2018 income tax return. B has not satisfied the requirements of paragraph (a) of this section because B's treatment of the start-up costs is inconsistent with the treatment of that item by Partnership on its partnership return.

(iii) *Example 3*. C is a partner in Partnership during 2018. Partnership reports a loss of $100,000 on its partnership return for 2018. On the 2018 Schedule K–1 attached to the partnership return, Partnership reports $5,000 as C's distributive share of that loss. On the 2018 Schedule K–1 furnished to C, however, Partnership reports $15,000 as C's distributive share of the loss. C reports the $15,000 loss on C's 2018 income tax return. C has not satisfied the requirements of paragraph (a) of this section because C reported C's distributive share of the loss in a manner that is inconsistent with how C's distributive share of the loss was reported on the 2018 partnership return actually filed. See, however, paragraph (d) of this section for the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule.

(iv) *Example 4*. D was a partner in Partnership during 2018. Partnership reports a loss of $100,000 on its partnership return for 2018. In 2020, Partnership files an AAR under section 6227 reporting that the amount of the loss on its 2018 partnership return is $90,000, rather than $100,000 as originally reported. Pursuant to section 6227, Partnership elects to have its partners take the adjustment into account, and furnishes D a statement showing D's share of the reduced loss for 2018. D fails to take his share of the reduced loss for 2018 into account in accordance with section 6227. D has not satisfied the requirements of paragraph (a) of this section because D has not taken into account his share of the loss in a manner consistent with how Partnership treated such items on the partnership return actually filed.

(v) *Example 5*. E was a partner in Partnership during 2018. In 2021, Partnership receives a notice of final partnership adjustment (FPA) in an administrative proceeding under subchapter C of chapter 63 with respect to Partnership's 2018 taxable year. The FPA reflects an imputed underpayment. Partnership properly elects the application of section 6226 with respect to the imputed underpayment and files with the IRS and furnishes to E a statement of E's share of adjustments with respect to Partnership's 2018 taxable year. E fails to take his share of the adjustments into account in accordance with section 6226. E has not satisfied the requirements of paragraph (a) of this section because E has not taken into account his share of adjustments with respect to Partnership's 2018 taxable year in a manner consistent with how Partnership treated such items on the section 6226 statement filed with the IRS.

(vi) *Example 6*. F was a partner in Partnership during 2018. F has a valid election under section 6221(b) in effect with respect to F's 2018 partnership taxable year. Notwithstanding F's election under section 6221(b) for its 2018 taxable year, F is subject to section 6222 for taxable year 2018. F must treat, on its 2018 partnership return, any items attributable to F's interest in Partnership in a manner that is consistent with the treatment of those items on the 2018 partnership return actually filed by Partnership.

(vii) *Example 7*. G was a partner in Partnership during 2018. G's taxable year ends on the same day as Partnership's 2018 taxable year. Partnership did not file a partnership return for its 2018 taxable year. G files an income tax return for its 2018 taxable year and reports G's share of a loss attributable to G's interest in Partnership. Because Partnership failed to file a partnership return, G's treatment of such loss is per se inconsistent pursuant to paragraph (a)(3) of this section.

(b) *Effect of inconsistent treatment*–(1) *Determination of underpayment of tax resulting from inconsistent treatment*. If a partner fails to satisfy the requirements of paragraph (a) of this section, unless the partner provides notice in accordance with paragraph (c) of this section, the IRS may adjust the inconsistently reported partnership-related item on the partner's return to make it consistent with the treatment of such item on the partnership return (or where no partnership return was filed, remove any treatment of such items from the partner's return) and determine any underpayment of tax that results from that adjustment. For purposes of this section, except as provided in paragraph (b)(3) of this section, the underpayment of tax is the amount by which the correct tax, as determined by making the partner's return consistent with the partnership return, exceeds the tax shown on the partner's return.

(2) *Assessment and collection of tax*. The IRS may assess and collect any underpayment of tax resulting from an adjustment described in paragraph (b)(1) of this section in the same manner as if the underpayment of tax were on account of a mathematical or clerical error appearing on the partner's return, except that the procedures under section 6213(b)(2) for requesting abatement of an assessment do not apply.

(3) *Effect when partner is a partnership*. For the effect of a failure to satisfy the requirements of paragraph (a) of this section where the partner is itself a partnership (a partnership-partner), see section 6232(d)(1)(B) and § 301.6232–1(d).

(4) *Examples*. The following examples illustrate the rules of this paragraph (b). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, and each partnership and its partners are calendar year taxpayers, unless otherwise stated.

(i) *Example 1*. H, an individual, is a partner in Partnership. On its partnership return for taxable year 2018, Partnership reports $100,000 in ordinary income. On the Schedule K–1 attached to the partnership return, as well as on the Schedule K–1 furnished to H, Partnership reports $15,000 as H's distributive share of the $100,000 in ordinary income. H reports only $5,000 of the $15,000 of ordinary income on his 2018 income tax return. The IRS may determine the amount of tax that results from adjusting the ordinary income attributable to H's interest in Partnership reported on H's 2018 income tax return from $5,000 to $15,000 and assess that resulting underpayment in tax as if it were on account of a mathematical or clerical error appearing on H's return. H may not request an abatement of that assessment under section 6213(b).

(ii) *Example 2*. J was a partner in Partnership during 2018. In 2021, Partnership receives an FPA in an administrative proceeding under subchapter C of chapter 63 with respect to Partnership's 2018 taxable year. The FPA reflects an imputed underpayment. Partnership properly elects the application of section 6226 with respect to the imputed underpayment and files with the IRS and furnishes to J a statement of J's share of adjustments with respect to Partnership's 2018 taxable year. J fails to report one adjustment reflected on the statement, J's share of a decrease in the amount of losses for 2018, on J's return as required by section 6226. The IRS may determine the amount of tax that results from adjusting the decrease in the amount of losses on J's return to be consistent with the amount included on the section 6226 statement filed with the IRS and may assess the resulting underpayment in tax as if it were on account of a mathematical or clerical error appearing on J's return. J may not request an abatement of that assessment under section 6213(b).

(c) *Notification to the IRS when items attributable to a partnership are treated inconsistently*–(1) *In general.* Paragraphs (a) and (b) of this section (regarding the consistent treatment of partnership-related items and the effect of inconsistent treatment) do not apply to partnership-related items identified as inconsistent (or that may be inconsistent) in a statement that the partner provides to the IRS according to the forms, instructions, and other guidance prescribed by the IRS. Instead, the procedures in paragraph (c)(3) of this section apply. A statement does not identify an inconsistency for purposes of this paragraph (c) unless it is attached to the partner's return on which the partnership-related item is treated inconsistently.

(2) *Coordination with section 6223*. Paragraph (c)(1) of this section is not applicable to a partnership-related item the treatment of which is binding on the partner because of actions taken by the partnership under subchapter C of chapter 63 or because of a final decision in a proceeding with respect to the partnership under subchapter C of chapter 63. For instance, the provisions of paragraph (c)(1) of this section do not apply with respect to the partner's treatment of a partnership-related item reflected on a statement described in § 301.6226–2 filed by the partnership with the IRS. See § 301.6226–1(e) (regarding the binding nature of

statements described in § 301.6226–2). Any underpayment resulting from the inconsistent treatment of an item described in this paragraph (c)(2) may be assessed and collected in accordance with paragraph (b)(2) of this section.

(3) *Partner protected only to extent of notification*. A partner who reports the inconsistent treatment of a partnership-related item is not subject to paragraphs (a) and (b) of this section only with respect to those items identified in the statement described in paragraph (c)(1) of this section. Thus, if a partner notifying the IRS with respect to one partnership-related item does not report the inconsistent treatment of another partnership-related item, the IRS may determine the amount of tax that results from adjusting the unidentified, inconsistently reported item on the partner's return to make it consistent with the treatment of such item on the partnership return and assess the resulting underpayment of tax in accordance with paragraph (b)(2) of this section.

(4) *Adjustment after notification*–(i) *In general*. If a partner notifies the IRS of the inconsistent treatment of a partnership-related item in accordance with paragraph (c)(1) of this section and the IRS disagrees with the inconsistent treatment, the IRS may adjust the identified, inconsistently reported item in a proceeding with respect to the partner. Nothing in this paragraph (c)(4)(i) precludes the IRS from also conducting a proceeding with respect to the partnership. If the IRS conducts a proceeding with respect to the partnership regarding the identified, inconsistently reported item, each partner of the partnership, including any partner that notified the IRS of inconsistent treatment in accordance with paragraph (c)(1) of this section, is bound by actions taken by the partnership and by any final decision in the proceeding with respect to the partnership. See paragraph (c)(2) of this section.

(ii) *Adjustments in partner proceeding*. In a proceeding with respect to a partner described in paragraph (c)(4)(i) of this section, the IRS may adjust any identified, inconsistently reported partnership-related item to make the item consistent with the treatment of that item on the partnership return or determine that the correct treatment of such item differs from the treatment on the partnership return and instead adjust the item to reflect the correct treatment, notwithstanding the treatment of that item on the partnership return. The IRS may also adjust any item on the partner's return, including items that are not partnership-related items. Any final decision with respect to an inconsistent position in a proceeding to which the partnership is not a party is not binding on the partnership.

(5) *Limitation on treating partnership-related items inconsistently after notice of administrative proceeding*. After a notice of administrative proceeding with respect to a partnership taxable year has been mailed by the IRS under section 6231, a partner may not notify the IRS the partner is treating a partnership-related item on the partner's return inconsistently with how such item was treated on the partnership return for such taxable year, except as provided in § 301.6225–2.

(6) *Examples*. The following examples illustrate the rules of this paragraph (c). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, and each partnership and partner is a calendar year taxpayer, unless otherwise stated.

(i) *Example 1*. K is a partner in Partnership during 2018. K treats a deduction and a capital gain attributable to Partnership on K's 2018 income tax return in a manner that is inconsistent with the treatment of those items by Partnership on its 2018 partnership return. K reports the inconsistent treatment of the deduction in accordance with paragraph (c)(1) of this section, but not the inconsistent treatment of the gain. Because K did not notify the IRS of the inconsistent treatment of the gain in accordance with paragraph (c)(1) of this section, the IRS may determine the amount of tax that results from adjusting the gain reported on K's 2018 income tax return in order to make the treatment of that gain consistent with how the gain was treated on Partnership's partnership return. Pursuant to paragraph (c)(3) of this section, the IRS may assess and collect the underpayment of tax resulting from the adjustment to the gain as if it were on account of a mathematical or clerical error appearing on K's return.

(ii) *Example 2*. L is a partner in Partnership during 2018. On its 2018 partnership return, Partnership treats partner L's distributive share of ordinary loss attributable to Partnership as $8,000. L, however, claims an ordinary loss of $9,000 as attributable to Partnership on its 2018 income tax return and notifies the IRS of the inconsistent treatment in accordance with paragraph (c)(1) of this section. As a result of the notice of inconsistent treatment, the IRS conducts a separate proceeding under subchapter B of chapter 63 of the Internal Revenue Code with respect to L's 2018 income tax return, a proceeding to which Partnership is not a party. During the proceeding, the IRS determines that the proper amount of L's distributive share of the ordinary loss from Partnership is $3,000. During the same proceeding, the IRS also determines that L overstated a charitable contribution deduction in the amount of $2,500 on its 2018 income tax return. The determination of the adjustment of L's share of ordinary loss is not binding on Partnership. The charitable contribution deduction is not attributable to Partnership or to another partnership subject to the provisions of subchapter C of chapter 63. The IRS may determine the amount of tax that results from adjusting the $9,000 ordinary loss deduction to $3,000 and from adjusting the charitable contribution deduction. Pursuant to paragraph (c)(4)(ii) of this section, the IRS is not limited to only adjusting the ordinary loss of $9,000, as originally reported on L's partner return, to $8,000, as originally reported by Partnership on its partnership return, nor is the IRS prohibited from adjusting the charitable contribution deduction in the proceeding with respect to L.

(d) *Partner receiving incorrect information*–(1) *In general*. A partner is treated as having complied with section 6222(c)(1)(B) and paragraph (c)(1) of this section with respect to a partnership-related item if the partner–

(i) Demonstrates that the treatment of such item on the partner's return is consistent with the treatment of that item on the statement, schedule, or other form prescribed by the IRS and furnished to the partner by the partnership; and

(ii) The partner makes an election in accordance with paragraph (d)(2) of this section.

(2) *Time and manner of making election*–(i) *In general*. An election under paragraph (d) of this section must be filed in writing with the IRS office set forth in the notice that notified the partner of the inconsistency no later than 60 days after the date of such notice.

(ii) *Contents of election.* The election described in paragraph (d)(2)(i) of this section must be–

(A) Clearly identified as an election under section 6222(c)(2)(B);

(B) Signed by the partner making the election;

(C) Accompanied by a copy of the statement, schedule, or other form furnished to the partner by the partnership and a copy of the IRS notice that notified the partner of the inconsistency; and

(D) Include any other information required in forms, instructions, or other guidance prescribed by the IRS.

(iii) *Treatment of partnership-related item is unclear*. Generally, the requirement described in paragraph (d)(2)(ii)(C) of this section will be satisfied by attaching a copy of the statement, schedule, or other form furnished to the partner by the partnership to the election (in addition to a copy of the IRS notice that notified the partner of the inconsistency). However, if it is not clear from the statement, schedule, or other form furnished by the partnership that the partner's treatment of the partnership-related item on the partner's return is consistent, the election must also include an explanation of how the treatment of such item on the statement, schedule, or other form furnished by the partnership is consistent with the treatment of the item on the partner's return, including with respect to the characterization, timing, and amount of such item.

(3) *Example*. M is a partner in Partnership for 2018. Partnership is subject to subchapter C of chapter 63, and both Partnership and M are calendar year taxpayers. On its 2018 partnership return, Partnership reports that M's distributive share of ordinary income attributable to Partnership is $1,000. Partnership furnishes to M a Schedule K–1 for 2018 showing $500 as M's distributive share of ordinary income. M reports $500 of ordinary income attributable to Partnership on its 2018 income tax return consistent with the Schedule K–1 furnished to M. The IRS notifies M that M's treatment of the ordinary income attributable to Partnership on its 2018 income tax return is inconsistent with how Partnership treated the ordinary income allocated to M on its 2018 partnership return. Within 60 days of receiving the notice from the IRS of the inconsistency, M files an election with the IRS in accordance with paragraph (d)(2) of this section. Because M made a valid election under section 6222(c)(2)(B) and paragraph (d)(1) of this section, M is treated as having notified the IRS of the inconsistency with respect to the ordinary income attributable to Partnership under paragraph (c)(1) of this section.

(e) *Applicability date*–(1) *In general*. Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 4. Section 301.6225–1 is added to read as follows:

§ 301.6225–1 Partnership adjustment by the Internal Revenue Service.

(a) *Imputed underpayment based on partnership adjustments*–(1) *In general*. In the case of any partnership adjustments (as defined in § 301.6241–1(a)(6)) by the Internal Revenue Service (IRS), if the adjustments result in an imputed underpayment (as determined in accordance with paragraph (b) of this section), the partnership must pay an amount equal to such imputed underpayment in accordance with paragraph (a)(2) of this section. If the adjustments do not result in an imputed underpayment (as described in paragraph (f) of this section), such adjustments must be taken into account by the partnership in the adjustment year (as defined in § 301.6241–1(a)(1)) in accordance with § 301.6225–3. Partnership adjustments may result in more than one imputed underpayment pursuant to paragraph (g) of this section. Each imputed underpayment determined under this section is based solely on partnership adjustments with respect to a single taxable year.

(2) *Partnership pays the imputed underpayment*. An imputed underpayment (determined in accordance with paragraph (b) of this section and included in a notice of final partnership adjustment (FPA) under section 6231(a)(3)) must be paid by the partnership in the same manner as if the imputed underpayment were a tax imposed for the adjustment year in accordance with § 301.6232–1. The FPA will include the amount of any imputed underpayment, as modified under § 301.6225–2 if applicable, unless the partnership waives its right to such FPA under section 6232(d)(2). See § 301.6232–1(d)(2). For the alternative to payment of the imputed underpayment by the partnership, see § 301.6226–1. If a partnership pays an imputed underpayment, the partnership's expenditure for the imputed underpayment is taken into account by the partnership in accordance with § 301.6241–4. For interest and penalties with respect to an imputed underpayment, see section 6233.

(3) *Imputed underpayment set forth in notice of proposed partnership adjustment*. An imputed underpayment set forth in a notice of proposed partnership adjustment (NOPPA) under section 6231(a)(2) is determined in accordance with paragraph (b) of this section without regard to any modification under § 301.6225–2. Modifications under § 301.6225–2, if allowed by the IRS, may change the amount of an imputed underpayment set forth in the NOPPA and determined in accordance with paragraph (b) of this section. Only the partnership adjustments set forth in a NOPPA are taken into account for purposes of determining an imputed underpayment under this section and for any modification under § 301.6225–2.

(b) *Determination of an imputed underpayment*–(1) *In general*. In the case of any partnership adjustment by the IRS, an imputed underpayment is determined by–

(i) Grouping the partnership adjustments in accordance with paragraph (c) of this section and, if appropriate, subgrouping such adjustments in accordance with paragraph (d) of this section;

(ii) Netting the adjustments in accordance with paragraph (e) of this section;

(iii) Calculating the total netted partnership adjustment in accordance with paragraph (b)(2) of this section;

(iv) Multiplying the total netted partnership adjustment by the highest rate of Federal income tax in effect for the reviewed year under section 1 or 11; and

(v) Increasing or decreasing the product that results under paragraph (b)(1)(iv) of this section by–

(A) Any amounts treated as net positive adjustments (as defined in paragraph (e)(4)(i) of this section) under paragraph (e)(3)(ii) of this section; and

(B) Except as provided in paragraph (e)(3)(ii) of this section, any amounts treated as net negative adjustments (as defined in paragraph (e)(4)(ii) of this section) under paragraph (e)(3)(ii) of this section.

(2) *Calculation of the total netted partnership adjustment*. For purposes of determining an imputed underpayment under paragraph (b)(1) of this section, the

total netted partnership adjustment is the sum of all net positive adjustments in the reallocation grouping described in paragraph (c)(2) of this section and the residual grouping described in paragraph (c)(5) of this section.

(3) *Adjustments to items for which tax has been collected under chapters 3 and 4 of the Internal Revenue Code.* A partnership adjustment is disregarded for purposes of calculating the imputed underpayment under paragraph (b) of this section to the extent that the IRS has collected the tax required to be withheld under chapter 3 or chapter 4 (as defined in § 301.6241–6(b)(2)(ii) and (iii)) that is attributable to the partnership adjustment. See § 301.6241–6(b)(3) for rules that apply when a partnership pays an imputed underpayment that includes a partnership adjustment to an amount subject to withholding (as defined in § 301.6241–6(b)(2)(i)) under chapter 3 or chapter 4 for which such tax has not yet been collected.

(4) *Treatment of adjustment as zero for purposes of calculating the imputed underpayment*. If the effect of one partnership adjustment is reflected in one or more other partnership adjustments, the IRS may treat the one adjustment as zero solely for purposes of calculating the imputed underpayment.

(c) *Grouping of partnership adjustments*–(1) *In general*. To determine an imputed underpayment under paragraph (b) of this section, partnership adjustments are placed into one of four groupings. These groupings are the reallocation grouping described in paragraph (c)(2) of this section, the credit grouping described in paragraph (c)(3) of this section, the creditable expenditure grouping described in paragraph (c)(4) of this section, and the residual grouping described in paragraph (c)(5) of this section. Adjustments in groupings may be placed in subgroupings, as appropriate, in accordance with paragraph (d) of this section. The IRS may, in its discretion, group adjustments in a manner other than the manner described in this paragraph (c) when such grouping would appropriately reflect the facts and circumstances. For requests to modify the groupings, see § 301.6225–2(d)(6).

(2) *Reallocation grouping*–(i) *In general*. Any adjustment that allocates or reallocates a partnership-related item to and from a particular partner or partners is a *reallocation adjustment*. Except in the case of an adjustment to a credit (as described in paragraph (c)(3) of this section) or to a creditable expenditure (as described in paragraph (c)(4) of this section), reallocation adjustments are placed in the reallocation grouping. Adjustments that reallocate a credit to and from a particular partner or partners are placed in the credit grouping (see paragraph (c)(3) of this section), and adjustments that reallocate a creditable expenditure to and from a particular partner or partners are placed in the creditable expenditure grouping (see paragraph (c)(4) of this section).

(ii) *Each reallocation adjustment results in at least two separate adjustments*. Each reallocation adjustment generally results in at least two separate adjustments. One adjustment reverses the effect of the improper allocation of a partnership-related item, and the other adjustment effectuates the proper allocation of the partnership-related item. Generally, a reallocation adjustment results in one positive adjustment (as defined in paragraph (d)(2)(iii) of this section) and one negative adjustment (as defined in paragraph (d)(2)(ii) of this section).

(3) *Credit grouping*. Each adjustment to a partnership-related item that is reported or could be reported by a partnership as a credit on the partnership's return, including a reallocation adjustment, is placed in the credit grouping.

(4) *Creditable expenditure grouping*–(i) *In general*. Each adjustment to a creditable expenditure, including a reallocation adjustment to a creditable expenditure, is placed in the creditable expenditure grouping.

(ii) *Adjustment to a creditable expenditure*–(A) *In general*. For purposes of this section, an adjustment to a partnership-related item is treated as an adjustment to a creditable expenditure if any person could take the item that is adjusted (or item as adjusted if the item was not originally reported by the partnership) as a credit. See § 1.704–1(b)(4)(ii) of this chapter. For instance, if the adjustment is a reduction of qualified research expenses, the adjustment is to a creditable expenditure for purposes of this section because any person allocated the qualified research expenses by the partnership could claim a credit with respect to their allocable portion of such expenses under section 41, rather than a deduction under section 174.

(B) *Creditable foreign tax expenditures*. The creditable expenditure grouping includes each adjustment to a creditable foreign tax expenditure (CFTE) as defined in § 1.704–1(b)(4)(viii)(*b*) of this chapter, including any reallocation adjustment to a CFTE.

(5) *Residual grouping*–(i) *In general*. Any adjustment to a partnership-related item not described in paragraph (c)(2), (3), or (4) of this section is placed in the residual grouping.

(ii) *Adjustments to partnership-related items that are not allocated under section 704(b)*. The residual grouping includes any adjustment to a partnership-related item that derives from an item that would not have been required to be allocated by the partnership to a reviewed year partner under section 704(b).

(6) *Recharacterization adjustments*–(i) *Recharacterization adjustment defined*. An adjustment that changes the character of a partnership-related item is a recharacterization adjustment. For instance, an adjustment that changes a loss from ordinary to capital or from active to passive is a recharacterization adjustment.

(ii) *Grouping recharacterization adjustments*. A recharacterization adjustment is placed in the appropriate grouping as described in paragraphs (c)(2) through (5) of this section.

(iii) *Recharacterization adjustments result in two partnership adjustments*. In general, a recharacterization adjustment results in at least two separate adjustments in the appropriate grouping under paragraph (c)(6)(ii) of this section. One adjustment reverses the improper characterization of the partnership-related item, and the other adjustment effectuates the proper characterization of the partnership-related item. A recharacterization adjustment results in two adjustments regardless of whether the amount of the partnership-related item is being adjusted. Generally, recharacterization adjustments result in one positive adjustment and one negative adjustment.

(d) *Subgroupings*–(1) *In general*. If all partnership adjustments are positive adjustments, this paragraph (d) does not apply. If any partnership adjustment within any grouping described in paragraph (c) of this section is a negative adjustment, the adjustments within that grouping are subgrouped in accordance with this paragraph (d). The IRS may, in its discretion, subgroup adjustments in a manner other than the manner described in this paragraph (d) when such subgrouping would appropriately reflect the facts and circumstances. For requests to modify the subgroupings, see § 301.6225–2(d)(6).

(2) *Definition of negative adjustments and positive adjustments*–(i) *In general*. For purposes of this section, partnership adjustments made by the IRS are treated as follows:

(A) An increase in an item of gain is treated as an increase in an item of income;

(B) A decrease in an item of gain is treated as a decrease in an item of income;

(C) An increase in an item of loss or deduction is treated as a decrease in an item of income; and

(D) A decrease in an item of loss or deduction is treated as an increase in an item of income.

(ii) *Negative adjustment*. A *negative adjustment* is any adjustment that is a decrease in an item of income, a partnership adjustment treated under paragraph (d)(2)(i) of this section as a decrease in an item of income, or an increase in an item of credit.

(iii) *Positive adjustment*–(A) *In general*. A *positive adjustment* is any adjustment that is not a negative adjustment as defined in paragraph (d)(2)(ii) of this section.

(B) *Treatment of adjustments that cannot be allocated under section 704(b)*. For purposes of determining an imputed underpayment under this section, an adjustment described in paragraph (c)(5)(ii) of this section that could result in an increase in income or decrease in a loss, deduction, or credit for any person without regard to any particular person's specific circumstances is treated, to the extent appropriate, either as a positive adjustment to income or to a credit.

(3) *Subgrouping rules*–(i) *In general*. Except as otherwise provided in this paragraph (d)(3), an adjustment is subgrouped according to how the adjustment would be required to be taken into account separately under section 702(a) or any other provision of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS applicable to the adjusted partnership-related item. A negative adjustment must be placed in the same subgrouping as another adjustment if the negative adjustment and the other adjustment would have been properly netted at the partnership level and such netted amount would have been required to be allocated to the partners of the partnership as a single partnership-related item for purposes of section 702(a), other provision of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS. For purposes of creating subgroupings under this section, if any adjustment could be subject to any preference, limitation, or restriction under the Code (or not allowed, in whole or in part, against ordinary income) if taken into account by any person, the adjustment is placed in a separate subgrouping from all other adjustments within the grouping.

(ii) *Subgrouping reallocation adjustments*–(A) *Reallocation adjustments in the reallocation grouping*. Each positive adjustment and each negative adjustment resulting from a reallocation adjustment as described in paragraph (c)(2)(ii) of this section is placed in its own separate subgrouping within the reallocation grouping. For instance, if the reallocation adjustment reallocates a deduction from one partner to another partner, the decrease in the deduction (positive adjustment) allocated to the first partner is placed in a subgrouping within the reallocation grouping separate from the increase in the deduction (negative adjustment) allocated to the second partner. Notwithstanding the requirement that reallocation adjustments be placed into separate subgroupings, if a particular partner or group of partners has two or more reallocation adjustments allocable to such partner or group, such adjustments may be subgrouped in accordance with paragraph (d)(3)(i) of this section and netted in accordance with paragraph (e) of this section.

(B) *Reallocation adjustments in the credit grouping*. In the case of a reallocation adjustment to a credit, which is placed in the credit grouping pursuant to paragraph (c)(3) of this section, the decrease in credits allocable to one partner or group of partners is treated as a positive adjustment, and the increase in credits allocable to another partner or group of partners is treated as a negative adjustment. Each positive adjustment and each negative adjustment resulting from a reallocation adjustment to credits is placed in its own separate subgrouping within the credit grouping.

(iii) *Subgroupings within the creditable expenditure grouping*–(A) *In general*. Each adjustment in the creditable expenditure grouping described in paragraph (c)(4) of this section is subgrouped in accordance with paragraphs (d)(3)(i) and (iii) of this section. For rules related to creditable expenditures other than CFTEs, see paragraph (d)(3)(iii)(C) of this section.

(B) *Subgroupings for adjustments to CFTEs*. Each adjustment to a CFTE is subgrouped based on the separate category of income to which the CFTE relates in accordance with section 904(d) and the regulations in part 1 of this chapter, and to account for any different allocation of the CFTE between partners. Two or more adjustments to CFTEs are included within the same subgrouping only if each adjustment relates to CFTEs in the same separate category, and each adjusted partnership-related item would be allocated to the partners in the same ratio had those items been properly reflected on the partnership return for the reviewed year.

(C) [Reserved]

(iv) *Subgrouping recharacterization adjustments*. Each positive adjustment and each negative adjustment resulting from a recharacterization adjustment as described in paragraph (c)(6) of this section is placed in its own separate subgrouping within the residual grouping. If a particular partner or group of partners has two or more recharacterization adjustments allocable to such partner or group, such adjustments may be subgrouped in accordance with paragraph (d)(3)(i) of this section and netted in accordance with paragraph (e) of this section.

(e) *Netting adjustments within each grouping or subgrouping*–(1) *In general*. All adjustments within a subgrouping determined in accordance with paragraph (d) of this section are netted in accordance with this paragraph (e) to determine whether there is a net positive adjustment (as defined in paragraph (e)(4)(i) of this section) or net negative adjustment (as defined in paragraph (e)(4)(ii) of this section) for that subgrouping. If paragraph (d) of this section does not apply because a grouping only includes positive adjustments, all adjustments in that grouping are netted in accordance with this paragraph (e). For purposes of this paragraph (e), netting means summing all adjustments together within each grouping or subgrouping, as appropriate.

(2) *Limitations on netting adjustments*. Positive adjustments and negative adjustments may only be netted against each other if they are in the same grouping in accordance with paragraph (c) of this section. If a negative adjustment is in a subgrouping in accordance with paragraph (d) of this section, the negative adjustment may only net with a positive adjustment also in that same subgrouping in accordance with paragraph (d) of this section. An adjustment in one grouping or subgrouping may not be netted against an adjustment in any other grouping or subgrouping. Adjustments from one taxable year may not be netted against adjustments from another taxable year.

(3) *Results of netting adjustments within groupings or subgroupings*–(i) *Groupings other than the credit and creditable expenditure groupings*. Except as described in paragraphs (e)(3)(ii) and (iii) of this section, each net positive adjustment (as defined in paragraph (e)(4)(i) of this section) with respect to a particular grouping or subgrouping that results after netting the adjustments in accordance with this paragraph (e) is included in the calculation of the total netted partnership adjustment under paragraph (b)(2) of this section. Each net negative adjustment (as defined in paragraph (e)(4)(ii) of this section) with respect to a grouping or subgrouping that results after netting the adjustments in accordance with this paragraph (e) is excluded from the calculation of the total netted partnership adjustment under paragraph (b)(2) of this section. Adjustments underlying a net negative adjustment described in the preceding sentence are adjustments that do not result in an imputed underpayment (as described in paragraph (f) of this section).

(ii) *Credit grouping*. Any net positive adjustment or net negative adjustment in the credit grouping (including any such adjustment with respect to a subgrouping within the credit grouping) is excluded from the calculation of the total netted partnership adjustment. A net positive adjustment described in this paragraph (e)(3)(ii) is taken into account under paragraph (b)(1)(v) of this section. A net negative adjustment described in this paragraph (e)(3)(ii), including a negative adjustment to a credit resulting from a reallocation adjustment that was placed in a separate subgrouping pursuant to paragraph (d)(3)(ii)(B) of this section, is treated as an adjustment that does not result in an imputed underpayment in accordance with paragraph (f)(1)(i) of this section, unless the IRS determines that such net negative adjustment should be taken into account under paragraph (b)(1)(v) of this section.

(iii) *Treatment of creditable expenditures*–(A) *Creditable foreign tax expenditures*. A net decrease to a CFTE in any CFTE subgrouping (as described in paragraph (d)(3)(iii) of this section) is treated as a net positive adjustment described in paragraph (e)(3)(ii) of this section and is excluded from the calculation of the total netted partnership adjustment under paragraph (b)(2) of this section. A net increase to a CFTE in any CFTE subgrouping is treated as a net negative adjustment described in paragraph (e)(3)(i) of this section. For rules related to creditable expenditures other than CFTEs, see paragraph (e)(3)(iii)(B) of this section.

(B) [Reserved]

(4) *Net positive adjustment and net negative adjustment defined*–(i) *Net positive adjustment*. A *net positive adjustment* means an amount that is greater than zero which results from netting adjustments within a grouping or subgrouping in accordance with this paragraph (e). A net positive adjustment includes a positive adjustment that was not netted with any other adjustment. A net positive adjustment includes a net decrease in an item of credit.

(ii) *Net negative adjustment*. A *net negative adjustment* means any amount which results from netting adjustments within a grouping or subgrouping in accordance with this paragraph (e) that is not a net positive adjustment (as defined in paragraph (e)(4)(i) of this section). A net negative adjustment includes a negative adjustment that was not netted with any other adjustment.

(f) *Partnership adjustments that do not result in an imputed underpayment*–(1) *In general*. Except as otherwise provided in paragraph (e) of this section, a partnership adjustment does not result in an imputed underpayment if–

(i) After grouping, subgrouping, and netting the adjustments as described in paragraphs (c), (d), and (e) of this section, the result of netting with respect to any grouping or subgrouping that includes a particular partnership adjustment is a net negative adjustment (as described in paragraph (e)(4)(ii) of this section); or

(ii) The calculation under paragraph (b)(1) of this section results in an amount that is zero or less than zero.

(2) *Treatment of an adjustment that does not result in an imputed underpayment*. Any adjustment that does not result in an imputed underpayment (as described in paragraph (f)(1) of this section) is taken into account by the partnership in the adjustment year in accordance with § 301.6225–3. If the partnership makes an election pursuant to section 6226 with respect to an imputed underpayment, the adjustments that do not result in that imputed underpayment that are associated with that imputed underpayment (as described in paragraph (g)(2)(iii)(B) of this section) are taken into account by the reviewed year partners in accordance with § 301.6226–3.

(g) *Multiple imputed underpayments in a single administrative proceeding*–(1) *In general*. The IRS, in its discretion, may determine that partnership adjustments for the same partnership taxable year result in more than one imputed underpayment. The determination of whether there is more than one imputed underpayment for any partnership taxable year, and if so, which partnership adjustments are taken into account to calculate any particular imputed underpayment is based on the facts and circumstances and nature of the partnership adjustments. See § 301.6225–2(d)(6) for modification of the number and composition of imputed underpayments.

(2) *Types of imputed underpayments*–(i) *In general*. There are two types of imputed underpayments: a general imputed underpayment (described in para-

graph (g)(2)(ii) of this section) and a specific imputed underpayment (described in paragraph (g)(2)(iii) of this section). Each type of imputed underpayment is separately calculated in accordance with this section.

(ii) *General imputed underpayment*. The general imputed underpayment is calculated based on all adjustments (other than adjustments that do not result in an imputed underpayment under paragraph (f) of this section) that are not taken into account to determine a specific imputed underpayment under paragraph (g)(2)(iii) of this section. There is only one general imputed underpayment in any administrative proceeding. If there is one imputed underpayment in an administrative proceeding, it is a general imputed underpayment and may take into account adjustments described in paragraph (g)(2)(iii) of this section, if any, and all adjustments that do not result in that general imputed underpayment (as described in paragraph (f) of this section) are associated with that general imputed underpayment.

(iii) *Specific imputed underpayment*–(A) *In general*. The IRS may, in its discretion, designate a specific imputed underpayment with respect to adjustments to a partnership-related item or items that were allocated to one partner or a group of partners that had the same or similar characteristics or that participated in the same or similar transaction or on such other basis as the IRS determines properly reflects the facts and circumstances. The IRS may designate more than one specific imputed underpayment with respect to any partnership taxable year. For instance, in a single partnership taxable year there may be a specific imputed underpayment with respect to adjustments related to a transaction affecting some, but not all, partners of the partnership (such as adjustments that are specially allocated to certain partners) and a second specific imputed underpayment with respect to adjustments resulting from a reallocation of a distributive share of income from one partner to another partner. The IRS may, in its discretion, determine that partnership adjustments that could be taken into account to calculate one or more specific imputed underpayments under this paragraph (g)(2)(iii)(A) for a partnership taxable year are more appropriately taken into account in determining the general imputed underpayment for such taxable year. For instance, the IRS may determine that it is more appropriate to calculate only the general imputed underpayment if, when calculating the specific imputed underpayment requested by the partnership, there is an increase in the number of the partnership adjustments that after grouping and netting result in net negative adjustments and are disregarded in calculating the specific imputed underpayment.

(B) *Adjustments that do not result in an imputed underpayment associated with a specific imputed underpayment*. If the IRS designates a specific imputed underpayment, the IRS will designate which adjustments that do not result in an imputed underpayment, if any, are appropriate to associate with that specific imputed underpayment. If the adjustments underlying that specific imputed underpayment are reallocation adjustments or recharacterization adjustments, the net negative adjustment that resulted from the reallocation or recharacterization is associated with the specific imputed underpayment. Any adjustments that do not result in an imputed underpayment that are not associated with a specific imputed underpayment under this paragraph (g)(2)(iii)(B) are associated with the general imputed underpayment.

(h) *Examples*. The following examples illustrate the rules of this section. For purposes of these examples, unless otherwise stated, each partnership is subject to the provisions of subchapter C of chapter 63 of the Code, each partnership and its partners are calendar year taxpayers, all partners are U.S. persons, the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and no partnership requests modification under § 301.6225–2.

(1) *Example 1*. Partnership reports on its 2019 partnership return $100 of ordinary income and an ordinary deduction of -$70. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that ordinary income was $105 instead of $100 ($5 adjustment) and that the ordinary deduction was -$80 instead of -$70 (-$10 adjustment). Pursuant to paragraph (c) of this section, the adjustments are both in the residual grouping. The -$10 adjustment to the ordinary deduction would not have been netted at the partnership level with the $5 adjustment to ordinary income and would not have been required to be allocated to the partners of the partnership as a single partnership-related item for purposes of section 702(a), other provision of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS. Because the -$10 adjustment to the ordinary deduction would result in a decrease in the imputed underpayment if netted with the $5 adjustment to ordinary income and because it might be limited if taken into account by any person, the -$10 adjustment must be placed in a separate subgrouping from the $5 adjustment to ordinary income. See paragraph (d)(3)(i) of this section. The total netted partnership adjustment is $5, which results in an imputed underpayment of $2. The -$10 adjustment to the ordinary deduction is a net negative amount and is an adjustment that does not result in an imputed underpayment which is taken into account by Partnership in the adjustment year in accordance with § 301.6225–3.

(2) *Example 2*. The facts are the same as *Example 1* in paragraph (h)(1) of this section, except that the -$10 adjustment to the ordinary deduction would have been netted at the partnership level with the $5 adjustment to ordinary income and would have been required to be allocated to the partners of the partnership as a single partnership-related item for purposes of section 702(a), other provision of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS. Therefore, the $5 adjustment and the -$10 adjustment must be placed in the same subgrouping within the residual grouping. The $5 adjustment and the -$10 adjustments are then netted in accordance with paragraph (e) of this section. Such netting results in a net negative adjustment (as defined under paragraph (e)(4)(ii) of this section) of -$5. Pursuant to paragraph (f) of this section, the -$5 net negative adjustment is an adjustment that does not result in an imputed underpayment. Because the only net adjustment is an adjustment that does not result in an imputed underpayment, there is no imputed underpayment.

(3) *Example 3*. Partnership reports on its 2019 partnership return ordinary income of $300, long-term capital gain of $125, long-term capital loss of -$75, a depreciation deduction of -$100, and a tax credit that can be claimed by the partnership of $5. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS determines that ordinary income is $500 ($200 adjustment), long-term capital gain is $200 ($75 adjustment), long-term capital loss is -$25 ($50 adjustment), the depreciation deduction is -$70 ($30 adjustment), and the tax credit is $3 ($2 adjustment). Pursuant to paragraph (c) of this section, the adjustment to the tax credit is in the credit grouping under paragraph (c)(3) of this section. The remaining adjustments are part of the residual grouping under paragraph (c)(5) of this section. Pursuant to paragraph (d)(2) of this section, all of the adjustments in the residual grouping are positive adjustments. Because there are no negative adjustments, there are no subgroupings within the residual grouping. Under paragraph (b)(2) of this section, the adjustments in the residual grouping are summed for a total netted partnership adjustment of $355. Under paragraph (b)(1)(iv) of this section, the total netted partnership adjustment is multiplied by 40 percent (highest tax rate in effect), which results in $142. Under paragraph (b)(1)(v) of this section, the $142 is increased by the $2 credit

adjustment, resulting in an imputed underpayment of $144.

(4) *Example 4*. Partnership reported on its 2019 partnership return long-term capital gain of $125. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS determines the long-term capital gain should have been reported as ordinary income of $125. There are no other adjustments for the 2019 taxable year. This recharacterization adjustment results in two adjustments in the residual grouping pursuant to paragraph (c)(6) of this section: an increase in ordinary income of $125 ($125 adjustment) as well as a decrease of long-term capital gain of $125 (-$125 adjustment). The decrease in long-term capital gain is a negative adjustment under paragraph (d)(2)(ii) of this section and the increase in ordinary income is a positive adjustment under paragraph (d)(2)(iii) of this section. Under paragraph (d)(3)(i) of this section, the adjustment to long-term capital gain is placed in a subgrouping separate from the adjustment to ordinary income because the reduction of long-term capital gain is required to be taken into account separately pursuant to section 702(a). The $125 decrease in long-term capital gain is a net negative adjustment in the long-term capital subgrouping and, as a result, is an adjustment that does not result in an imputed underpayment under paragraph (f) of this section and is taken into account in accordance with § 301.6225–3. The $125 increase in ordinary income results in a net positive adjustment under paragraph (e)(4)(i) of this section. Because the ordinary subgrouping is the only subgrouping resulting in a net positive adjustment, $125 is the total netted partnership adjustment under paragraph (b)(2) of this section. Under paragraph (b)(1)(iv) of this section, $125 is multiplied by 40 percent resulting in an imputed underpayment of $50.

(5) *Example 5*. Partnership reported a $100 deduction for certain expenses on its 2019 partnership return and an additional $100 deduction with respect to the same type of expenses on its 2020 partnership return. The IRS initiates an administrative proceeding with respect to Partnership's 2019 and 2020 taxable years and determines that Partnership reported a portion of the expenses as a deduction in 2019 that should have been taken into account in 2020. Therefore, for taxable year 2019, the IRS determines that Partnership should have reported a deduction of $75 with respect to the expenses ($25 adjustment in the 2019 residual grouping). For 2020, the IRS determines that Partnership should have reported a deduction of $125 with respect to these expenses (-$25 adjustment in the 2020 residual grouping). There are no other adjustments for the 2019 and 2020 partnership taxable years. Pursuant to paragraph (e)(2) of this section, the adjustments for 2019 and 2020 are not netted with each other. The 2019 adjustment of $25 is the only adjustment for that year and a net positive adjustment under paragraph (e)(4)(i) of this section, and therefore the total netted partnership adjustment for 2019 is $25 pursuant to paragraph (b)(2) of this section. The $25 total netted partnership adjustment is multiplied by 40 percent resulting in an imputed underpayment of $10 for Partnership's 2019 taxable year. The $25 increase in the deduction for 2020, a net negative adjustment under paragraph (e)(4)(ii) of this section, is an adjustment that does not result in an imputed underpayment for that year. Therefore, there is no imputed underpayment for 2020.

(6) *Example 6*. On its partnership return for the 2020 taxable year, Partnership reported ordinary income of $100 and a capital gain of $50. Partnership had four equal partners during the 2020 tax year, all of whom were individuals. On its partnership return for the 2020 tax year, the capital gain was allocated to partner E and the ordinary income was allocated to all partners based on their interests in Partnership. In an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that for 2020 the capital gain allocated to E should have been $75 instead of $50 and that Partnership should have recognized an additional $10 in ordinary income. In the NOPPA mailed by the IRS, the IRS may determine pursuant to paragraph (g) of this section that there is a general imputed underpayment with respect to the increase in ordinary income and a specific imputed underpayment with respect to the increase in capital gain specially allocated to E.

(7) *Example 7*. On its partnership return for the 2020 taxable year, Partnership reported a recourse liability of $100. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that the $100 recourse liability should have been reported as a $100 nonrecourse liability. Under paragraph (d)(2)(iii)(B) of this section, the adjustment to the character of the liability is an adjustment to an item that cannot be allocated under section 704(b). The adjustment therefore is treated as a $100 increase in income because such recharacterization of a liability could result in up to $100 in taxable income if taken into account by any person. The $100 increase in income is a positive adjustment in the residual grouping under paragraph (c)(5)(ii) of this section. There are no other adjustments for the 2020 partnership taxable year. The $100 positive adjustment is treated as a net positive adjustment under paragraph (e)(4)(i) of this section, and the total netted partnership adjustment under paragraph (b)(2) of this section is $100. Pursuant to paragraph (b)(1) of this section, the total netted partnership adjustment is multiplied by 40 percent for an imputed underpayment of $40.

(8) *Example 8*. Partnership reports on its 2019 partnership return $400 of CFTEs in the general category under section 904(d). The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that the amount of CFTEs was $300 instead of $400 (-$100 adjustment to CFTEs). No other adjustments are made for the 2019 taxable year. The -$100 adjustment to CFTEs is placed in the creditable expenditure grouping described in paragraph (c)(4) of this section. Pursuant to paragraph (e)(3)(iii) of this section, the decrease to CFTEs in the creditable expenditure grouping is treated as a positive adjustment to (decrease in) credits in the credit grouping under paragraph (c)(3) of this section. Because no other adjustments have been made, the $100 decrease in credits produces an imputed underpayment of $100 under paragraph (b)(1) of this section.

(9) *Example 9*. Partnership reports on its 2019 partnership return $400 of CFTEs in the passive category under section 904(d). The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that the CFTEs reported by Partnership were general category instead of passive category CFTEs. No other adjustments are made. Under the rules in paragraph (c)(6) of this section, an adjustment to the category of a CFTE is treated as two separate adjustments: an increase to general category CFTEs of $400 and a decrease to passive category CFTEs of $400. Both adjustments are included in the creditable expenditure grouping under paragraph (c)(4) of this section, but they are included in separate subgroupings. Therefore, the two amounts do not net. Instead, the $400 increase to CFTEs in the general category subgrouping is treated as a net negative adjustment under paragraph (e)(3)(iii)(A) of this section and is an adjustment that does not result in an imputed underpayment under paragraph (f) of this section. The decrease to CFTEs in the passive category subgrouping of the creditable expenditure grouping results in a decrease in CFTEs. Therefore, pursuant to paragraph (e)(3)(iii)(A) of this section, it is treated as a positive adjustment to (decrease in) credits in the credit grouping under paragraph (c)(3) of this section, which results in an imputed underpayment of $400 under paragraph (b)(1) of this section.

(10) *Example 10*. Partnership has two partners, A and B. Under the partnership agreement, $100 of the CFTE is specially allocated to A for the 2019 taxable year. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that $100 of CFTE should be reallocated from A to B. Because the adjustment reallocates a creditable expenditure, paragraph (c)(4) of this section provides that it is included in the creditable expenditure grouping rather than the reallocation grouping. The partnership adjustment is a -$100 adjustment to general category CFTE allocable to A and an increase of $100 to general category CFTE allocable to B. Pursuant to paragraph (d)(3)(iii) of this section, the -$100 adjustment to general category CFTE and the increase of $100 to general category CFTE are included in separate subgroupings in the creditable expenditure grouping. The $100 increase in general category CFTEs, B-allocation subgrouping, is a net negative adjustment, which does not result in an imputed underpayment and is therefore taken into account by the partnership in the adjustment year in accordance with § 301.6225–3. The net decrease to CFTEs in the general-category, A-allocation subgrouping, is treated as a positive adjustment to (decrease in) credits in the credit grouping under paragraph (c)(3) of this section, resulting in an imputed underpayment of $100 under paragraph (b)(1) of this section.

(11) *Example 11*. Partnership has two partners, A and B. Partnership owns two entities, DE1 and DE2, that are disregarded as separate from their owner for Federal income tax purposes and are operating in and paying taxes to foreign jurisdictions. The partnership agreement provides that all items from DE1 and DE2 are allocable to A and B in the following manner. Items related to DE1: to A 75 percent and to B 25 percent. Items related to DE2: to A 25 percent and to B 75 percent. On Partnership's 2018 return, Partnership reports CFTEs in the general category of $300, $100 with respect to DE1 and $200 with respect to DE2. Partnership allocates the $300 of CFTEs $125 and $175 to A and B respectively.

During an administrative proceeding with respect to Partnership's 2018 taxable year, the IRS determines that Partnership understated the amount of creditable foreign tax paid by DE2 by $40 and overstated the amount of creditable foreign tax paid by DE1 by $80. No other adjustments are made. Because the two adjustments each relate to CFTEs that are subject to different allocations, the two adjustments are in different subgroupings under paragraph (d)(3)(iii)(B) of this section. The adjustment reducing the CFTEs related to DE1 results in a decrease in CFTEs within that subgrouping and under paragraph (e)(3)(iii)(A) of this section is treated as a decrease in credits in the credit grouping under paragraph (c)(3) of this section and results in an imputed underpayment of $80 under paragraph (b)(1) of this section. The increase of $40 of general category CFTE related to the DE2 subgrouping results in an increase in CFTEs within that subgrouping and is treated as a net negative adjustment, which does not result in an imputed underpayment and is taken into account in the adjustment year in accordance with § 301.6225–3.

(12) *Example 12*. Partnership has two partners, A and B. For the 2019 taxable year, Partnership allocated $70 of long term capital loss to B as well as $30 of ordinary income. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS determines that the $30 of ordinary income and the $70 of long term capital loss should be reallocated from B to A. The partnership adjustments are a decrease of $30 of ordinary income (-$30 adjustment) allocated to B and a corresponding increase of $30 of ordinary income ($30 adjustment) allocated to A, as well as a decrease of $70 of long term capital loss ($70 adjustment) allocated to B and a corresponding increase of $70 of long term capital loss (-$70 adjustment) allocated to A. See paragraph (c)(2)(ii) of this section. Pursuant to paragraph (d)(3)(ii)(A) of this section, for purposes of determining the imputed underpayment, each positive adjustment and each negative adjustment allocated to A and B is placed in its own separate subgrouping. However, notwithstanding the general requirement that reallocation adjustments be subgrouped separately, the reallocation adjustments allocated to A and B may be subgrouped in accordance with paragraph (d)(3)(i) of this section because there are two reallocation adjustments allocated to each of A and B, respectively. Pursuant to paragraph (d)(3)(i) of this section, because the partnership adjustment allocated to A would not have been netted at the partnership level and would not have been allocated to A as a single partnership-related item for purposes of section 702(a), other provisions of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS, the positive adjustment and the negative adjustment allocated to A remain in separate subgroupings. For the same reasons with respect to the adjustments allocated to B, the positive adjustment and the negative adjustment allocated to B also remain in separate subgroupings. As a result, the reallocation grouping would have four subgroupings, one for each adjustment: the decrease in ordinary income allocated to B (-$30 adjustment), the increase in ordinary income allocated to A ($30 adjustment), the decrease in long term capital loss allocated to B ($70 adjustment), and the increase long term capital loss allocated to A (-$70 adjustment). Pursuant to paragraph (e) of this section, no netting may occur between subgroupings. Accordingly, the ordinary income allocated to A ($30 adjustment) and the long term capital loss allocated to B ($70 adjustment) are both net positive adjustments. These net positive adjustments are added together to determine the total netted partnership adjustment of $100. The total netted partnership adjustment is multiplied by 40 percent, which results in an imputed underpayment of $40. The ordinary income allocated to B (-$30 adjustment) and the long term capital loss allocated to A (-$70 adjustment) are net negative adjustments treated as adjustments that do not result in an imputed underpayment taken into account by the partnership pursuant to § 301.6225–3.

(i) *Applicability date*–(1) *In general*. Except as provided in paragraph (i)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018, for which a valid election under § 301.9100–22T is in effect.

Par. 5. Section 301.6225–2 is added to read as follows:

§ 301.6225–2 Modification of imputed underpayment.

(a) *Partnership may request modification of an imputed underpayment*. A partnership that has received a notice of proposed partnership adjustment (NOPPA) under section 6231(a)(2) from the Internal Revenue Service (IRS) may request modification of a proposed imputed underpayment set forth in the NOPPA in accordance with this section and any forms, instructions, and other guidance prescribed by the IRS. The effect of modification on a proposed imputed underpayment is described in paragraph (b) of this section. Unless otherwise described in paragraph (d) of this section, a partnership may request any type of modification of an imputed underpayment described in paragraph (d) of this section in the time and manner described in paragraph (c) of this section. A partnership may request modification with respect to a partnership adjustment (as defined in § 301.6241–1(a)(6)) that does not result in an imputed underpayment (as described in § 301.6225–1(f)(1)(ii)) as described in paragraph (e) of this section. Only the partnership representative may request modification under this section. See section 6223 and § 301.6223–2 for rules regarding the binding authority of the partnership representative. For purposes of this section, the term *relevant partner* means any person for whom modification is requested by the partnership that is–

(1) A reviewed year partner (as defined in § 301.6241–1(a)(9)), including any pass-through partner (as defined in § 301.6241–1(a)(5)), except for any reviewed year partner that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes; or

(2) An indirect partner (as defined in § 301.6241–1(a)(4)) except for any indirect partner that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes.

(b) *Effect of modification*–(1) *In general*. A modification of an imputed underpayment under this section that is approved by the IRS may result in an increase or decrease in the amount of an imputed underpayment set forth in the NOPPA. A modification under this section has no effect on the amount of any partnership adjustment determined under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63). See paragraph (e) of this section for the effect of modification on adjustments that do not result in an imputed underpayment. A modification may increase or decrease an imputed underpayment by affecting the extent to which adjustments factor into the determination of the imputed underpayment (as described in paragraph (b)(2) of this section), the tax rate that is applied in calculating the imputed underpayment (as described in paragraph (b)(3) of this section), and the number and composition of imputed underpayments, including the placement of adjustments in groupings and subgroupings (if applicable) (as described in paragraph (b)(4) of this section), as well as to the extent of other modifications allowed under rules provided in forms, instructions, or other guidance prescribed by the IRS (as described in paragraph (b)(5) of this section). If a partnership requests more than one modification under this section, modifications are taken into account in the following order:

(i) Modifications that affect the extent to which an adjustment factors into the determination of the imputed underpayment under paragraph (b)(2) of this section;

(ii) Modification of the number and composition of imputed underpayments under paragraph (b)(4) of this section; and

(iii) Modifications that affect the tax rate under paragraph (b)(3) of this section.

(2) *Modifications that affect partnership adjustments for purposes of determining the imputed underpayment*. If the IRS approves modification with respect to a partnership adjustment, such partnership adjustment is excluded from the determination of the imputed underpayment as determined under § 301.6225–1(b). This paragraph (b)(2) applies to modifications under–

(i) Paragraph (d)(2) of this section (amended returns and the alternative procedure to filing amended returns);

(ii) Paragraph (d)(3) of this section (tax-exempt status);

(iii) Paragraph (d)(5) of this section (specified passive activity losses);

(iv) Paragraph (d)(7) of this section (qualified investment entities);

(v) Paragraph (d)(8) of this section (closing agreements), if applicable;

(vi) Paragraph (d)(9) of this section (tax treaty modifications), if applicable; and

(vii) Paragraph (d)(10) of this section (other modifications), if applicable.

(3) *Modifications that affect the tax rate*–(i) *In general*. If the IRS approves a modification with respect to the tax rate applied to a partnership adjustment, such modification results in a reduction in tax rate applied to the total netted partnership adjustment with respect to the partnership adjustments in accordance with this paragraph (b)(3). A modification of the tax rate does not affect how the partnership adjustment factors into the calculation of the total netted partnership adjustment. This paragraph (b)(3) applies to modifications under–

(A) Paragraph (d)(4) of this section (rate modification);

(B) Paragraph (d)(8) of this section (closing agreements), if applicable;

(C) Paragraph (d)(9) of this section (tax treaty modifications), if applicable; and

(D) Paragraph (d)(10) of this section (other modifications), if applicable.

(ii) *Determination of the imputed underpayment in the case of rate modification*. Except as described in paragraph (b)(3)(iv) of this section, in the case of an approved modification described under paragraph (b)(3)(i) of this section, the imputed underpayment is the sum of the total netted partnership adjustment consisting of the net positive adjustments not subject to rate reduction under paragraph (b)(3)(i) of this section (taking into account any approved modifications under paragraph (b)(2) of the section), plus the *rate-modified netted partnership adjustment* determined under paragraph (b)(3)(iii) of this section, reduced or increased by any adjustments to credits (taking into account any modifications under paragraph (b)(4) of this section). The total netted partnership adjustment not subject to rate reduction under paragraph (b)(3)(i) of this section (taking into account any approved modifications under paragraph (b)(2) of the section) is determined by multiplying the partnership adjustments included in the total netted partnership adjustment that are not subject to rate modification under paragraph (b)(3)(i) of this section (including any partnership adjustment that remains after applying paragraph (b)(3)(iii) of this section) by the highest tax rate (as described in § 301.6225–1(b)(1)(iv)).

(iii) *Calculation of rate-modified netted partnership adjustment in the case of a rate modification*. The *rate-modified netted partnership adjustment* is determined as follows–

(A) Determine each relevant partner's distributive share of the partnership adjustments subject to an approved modification under paragraph (b)(3)(i) of this section based on how each adjustment subject to rate modification was allocated in the NOPPA, or if the appropriate allocation was not addressed in the NOPPA, how the adjustment would be properly allocated under subchapter K of chapter 1 of the Internal Revenue Code (subchapter K) to such relevant partner in the reviewed year (as defined in § 301.6241–1(a)(8)).

(B) Multiply each partnership adjustment determined under paragraph (b)(3)(iii)(A) of this section by the tax rate applicable to such adjustment based on the approved modification described under paragraph (b)(3)(i) of this section.

(C) Add all of the amounts calculated under paragraph (b)(3)(iii)(B) of this section with respect to each partnership adjustment subject to an approved modification described under paragraph (b)(3)(i) of this section.

(iv) *Rate modification in the case of special allocations*. If an imputed underpayment results from adjustments to more than one partnership-related item and any relevant partner for whom modification described under paragraph (b)(3)(i) of this section is approved has a distributive share of such items that is not the same with respect to all such items, the imputed underpayment as modified based on the modification types described under paragraph (b)(3)(i) of this section is determined as described in paragraphs (b)(3)(ii) and (iii) of this section except that each relevant partner's distributive share is determined based on the amount of net gain or loss to the partner that would have resulted if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year appropriately adjusted to reflect any approved modification under paragraphs (d)(2), (3), and (5) through (10) of this section with respect to any relevant partner. Notwithstanding the preceding sentence, the partnership may request that the IRS apply the rule in paragraph (b)(3)(iii)(A) of this section when determining each relevant partner's distributive share for purposes of this paragraph (b)(3)(iv). Upon request by the IRS, the partnership may be required to provide the relevant partners' capital account calculation through the end of the reviewed year, a calculation of asset liquidation gain or loss, and any other information necessary to determine whether rate modification is appropriate, consistent with the rules of paragraph (c)(2) of this section. Any calculation by the partnership that is necessary to comply with the rules in this paragraph (b)(3)(iv) is not considered a revaluation for purposes of section 704.

(4) *Modification of the number and composition of imputed underpayments*. Once approved by the IRS, a modification under paragraph (d)(6) of this section affects the manner in which adjustments are

placed into groupings and subgroupings (as described in § 301.6225–1(c) and (d)) or whether the IRS designates one or more specific imputed underpayments (as described in § 301.6225–1(g)). If the IRS approves a request for modification under this paragraph (b)(4), the imputed underpayment and any specific imputed underpayment affected by or resulting from the modification is determined according to the rules of § 301.6225–1 subject to any other modifications approved by the IRS under this section.

(5) *Other modifications*. The effect of other modifications described in paragraph (d)(10) of this section, including the order that such modification will be taken into account for purposes of paragraph (b)(1) of this section, may be set forth in forms, instructions, or other guidance prescribed by the IRS.

(c) *Time, form, and manner for requesting modification*–(1) *In general*. In addition to the requirements described in paragraph (d) of this section, a request for modification under this section must be submitted in accordance with, and include the information required by, the forms, instructions, and other guidance prescribed by the IRS. The partnership representative must submit any request for modification and all relevant information (including information required under paragraphs (c)(2) and (d) of this section) to the IRS within the time described in paragraph (c)(3) of this section. The IRS will notify the partnership representative in writing of the approval or denial, in whole or in part, of any request for modification. A request for modification, including a request by the IRS for information related to a request for modification, and the determination by the IRS to approve or not approve all or a portion of a request for modification, is part of the administrative proceeding with respect to the partnership under subchapter C of chapter 63 and does not constitute an examination, inspection, or other administrative proceeding with respect to any other person for purposes of section 7605(b).

(2) *Partnership must substantiate facts supporting a request for modification*–(i) *In general*. A partnership requesting modification under this section must substantiate the facts supporting such a request to the satisfaction of the IRS. The documents and other information necessary to substantiate a particular request for modification are based on the facts and circumstances of each request, as well as the type of modification requested under paragraph (d) of this section, and may include tax returns, partnership operating documents, certifications in the form and manner required with respect to the particular modification, and any other information necessary to support the requested modification. The IRS may, in forms, instructions, or other guidance, set forth procedures with respect to information and documents supporting the modification, including procedures to require particular documents or other information to substantiate a particular type of modification, the manner for submitting documents and other information to the IRS, and recordkeeping requirements. Pursuant to section 6241(10), the IRS may require the partnership to file or submit anything required to be filed or submitted under this section to be filed or submitted electronically. The IRS will deny a request for modification if a partnership fails to provide information the IRS determines is necessary to substantiate a request for modification, or if the IRS determines there is a failure by any person to make any required payment, within the time restrictions described in paragraph (c) of this section.

(ii) *Information to be furnished for any modification request*. In the case of any modification request, the partnership representative must furnish to the IRS such information as is required by forms, instructions, and other guidance prescribed by the IRS or that is otherwise requested by the IRS related to the requested modification. Such information may include a detailed description of the partnership's structure, allocations, ownership, and ownership changes, its relevant partners for each taxable year relevant to the request for modification, as well as the partnership agreement as defined in § 1.704–1(b)(2)(ii)(*h*) of this chapter for each taxable year relevant to the modification request. In the case of any modification request with respect to a relevant partner that is an indirect partner, the partnership representative must provide to the IRS any information that the IRS may require relevant to any pass-through partner or wholly-owned entity disregarded as separate from its owner for Federal income tax purposes through which the relevant partner holds its interest in the partnership. For instance, if the partnership requests modification with respect to an amended return filed by a relevant partner pursuant to paragraph (d)(2) of this section, the partnership representative may be required to provide to the IRS information that would have been required to have been filed by pass-through partners through which the relevant partner holds its interest in the partnership as if those pass-through partners had also filed their own amended returns.

(3) *Time for submitting modification request and information*–(i) *Modification request*. Unless the IRS grants an extension of time, all information required under this section with respect to a request for modification must be submitted to the IRS in the form and manner prescribed by the IRS on or before 270 days after the date the NOPPA is mailed.

(ii) *Extension of the 270-day period*. The IRS may, in its discretion, grant a request for extension of the 270-day period described in paragraph (c)(3)(i) of this section provided the partnership submits such request to the IRS, in the form and manner prescribed by forms, instructions, or other guidance prescribed by the IRS before expiration of such period, as extended by any prior extension granted under this paragraph (c)(3)(ii).

(iii) *Expiration of the 270-day period by agreement*. The 270-day period described in paragraph (c)(3)(i) of this section (including any extensions under paragraph (c)(3)(ii) of this section) expires as of the date the partnership and the IRS agree, in the form and manner prescribed by form, instructions, or other guidance prescribed by the IRS to waive the 270-day period after the mailing of the NOPPA and before the IRS may issue a notice of final partnership adjustment. See section 6231(b)(2)(A); § 301.6231–1(b)(2).

(4) *Approval of modification by the IRS*. Notification of approval will be provided to the partnership only after receipt of all relevant information (including any supplemental information required by the IRS) and all necessary payments with respect to the particular modification re-

quested before expiration of the 270-day period in paragraph (c)(3)(i) of this section plus any extension granted by the IRS under paragraph (c)(3)(ii) of this section.

(d) *Types of modification*–(1) *In general*. Except as otherwise described in this section, a partnership may request one type of modification or more than one type of modification described in paragraph (d) of this section.

(2) *Amended returns by partners*–(i) *In general*. A partnership may request a modification of an imputed underpayment based on an amended return filed by a relevant partner provided all of the partnership adjustments properly allocable to such relevant partner are taken into account and any amount due is paid in accordance with paragraph (d)(2) of this section. Only adjustments to partnership-related items or adjustments to a relevant partner's tax attributes affected by adjustments to partnership-related items may be taken into account on an amended return under paragraph (d)(2) of this section. A partnership may request a modification for purposes of paragraph (d)(2) of this section by submitting a modification request based on the alternative procedure to filing amended returns as described in paragraph (d)(2)(x) of this section. The partnership may not request an additional modification of any imputed underpayment for a partnership taxable year under this section with respect to any relevant partner that files an amended return (or utilizes the alternative procedure to filing amended returns) under paragraph (d)(2) of this section or with respect to any partnership adjustment allocated to such relevant partner.

(ii) *Requirements for approval of a modification request based on amended return*. Except as otherwise provided under the alternative procedure described in paragraph (d)(2)(x) of this section, an amended return modification request under paragraph (d)(2) of this section will not be approved unless the provisions of this paragraph (d)(2)(ii) are satisfied. The partnership may satisfy the requirements of paragraph (d)(2) of this section by demonstrating in accordance with forms, instructions, and other guidance provided by the IRS that a relevant partner has previously taken into account the partnership adjustments described in paragraph (d)(2)(i) of this section, made any required adjustments to tax attributes resulting from the partnership adjustments for the years described in paragraph (d)(2)(ii)(B) of this section, and made all required payments under paragraph (d)(2)(ii)(A) of this section.

(A) *Full payment required*. An amended return modification request under paragraph (d)(2) of this section will not be approved unless the relevant partner filing the amended return has paid all tax, penalties, additions to tax, additional amounts, and interest due as a result of taking into account all partnership adjustments in the first affected year (as defined in § 301.6226–3(b)(2)) and all modification years (as described in paragraph (d)(2)(ii)(B) of this section) at the time such return is filed with the IRS. Except for a pass-through partner calculating its payment amount pursuant to paragraph (d)(2)(vi) of this section, for purposes of this paragraph (d)(2)(ii)(A), the term *tax* means tax imposed by chapter 1 of the Internal Revenue Code (chapter 1).

(B) *Amended returns for all relevant taxable years must be filed*. Modification under paragraph (d)(2) of this section will not be approved by the IRS unless a relevant partner files an amended return for the first affected year and any modification year. A *modification year* is any taxable year with respect to which any tax attribute (as defined in § 301.6241–1(a)(10)) of the relevant partner is affected by reason of taking into account the relevant partner's distributive share of all partnership adjustments in the first affected year. A modification year may be a taxable year before or after the first affected year, depending on the effect on the relevant partner's tax attributes of taking into account the relevant partner's distributive share of the partnership adjustments in the first affected year.

(C) *Amended returns for partnership adjustments that reallocate distributive shares*. Except as described in this paragraph (d)(2)(ii)(C), in the case of partnership adjustments that reallocate the distributive shares of any partnership-related item from one partner to another, a modification under paragraph (d)(2) of this section will be approved only if all partners affected by such adjustments file amended returns in accordance with paragraph (d)(2) of this section. The IRS may determine that the requirements of this paragraph (d)(2)(ii)(C) are satisfied even if not all relevant partners affected by such adjustments file amended returns provided any relevant partners affected by the reallocation not filing amended returns take into account their distributive share of the adjustments through other modifications approved by the IRS (including the alternative procedure to filing amended returns under paragraph (d)(2)(x) of this section) or if a pass-through partner takes into account the relevant adjustments in accordance with paragraph (d)(2)(vi) of this section. For instance, in the case of adjustments that reallocate a loss from one partner to another, the IRS may determine that the requirements of this paragraph (d)(2)(ii)(C) have been satisfied if one affected relevant partner files an amended return taking into account the adjustments and the other affected relevant partner signs a closing agreement with the IRS taking into account the adjustments. Similarly, in the case of adjustment that reallocate income from one partner to another, the IRS may determine that the requirements of this paragraph (d)(2)(ii)(C) have been satisfied to the extent an affected relevant partner meets the requirements of paragraph (d)(3) of this section (regarding tax-exempt partners) and through such modification fully takes into account all adjustments reallocated to the affected relevant partner.

(iii) *Form and manner for filing amended returns*. A relevant partner must file all amended returns required for modification under paragraph (d)(2) of this section with the IRS in accordance with forms, instructions, and other guidance prescribed by the IRS. Except as otherwise provided under the alternative procedure described in paragraph (d)(2)(x) of this section, the IRS will not approve modification under paragraph (d)(2) of this section unless prior to the expiration of the 270-day period described in paragraph (c)(3) of this section, the partnership representative provides to the IRS, in the form and manner prescribed by the IRS, an affidavit from each relevant partner signed under penalties of perjury by such partner stating that all of the amended returns 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).

(iv) *Period of limitations.* Generally, the period of limitations under sections 6501 and 6511 do not apply to an amended return filed under paragraph (d)(2) of this section provided the amended return otherwise meets the requirements of paragraph (d)(2) of this section.

(v) *Amended returns in the case of adjustments allocated through certain pass-through partners*. A request for modification related to an amended return of a relevant partner that is an indirect partner holding its interest in the partnership (directly or indirectly) through a pass-through partner that could be subject to tax imposed by chapter 1 (chapter 1 tax) on the partnership adjustments that are properly allocated to such pass-through partner will not be approved unless the partnership–

(A) Establishes that the pass-through partner is not subject to chapter 1 tax on the adjustments that are properly allocated to such pass-through partner; or

(B) Requests modification with respect to the adjustments resulting in chapter 1 tax for the pass-through partner, including full payment of such chapter 1 tax for the first affected year and all modification years under paragraph (d)(2) of this section or in accordance with forms, instructions, or other guidance prescribed by the IRS.

(vi) *Amended returns in the case of pass-through partners*–(A) *Pass-through partners may file amended returns*. A relevant partner that is a pass-through partner, including a partnership-partner (as defined in § 301.6241–1(a)(7)) that has a valid election under section 6221(b) in effect for a partnership taxable year, may, in accordance with forms, instructions, and other guidance provided by the IRS and solely for purposes of modification under paragraph (d)(2) of this section, take into account its share of the partnership adjustments and determine and pay an amount calculated in the same manner as the amount computed under § 301.6226–3(e)(4)(iii) subject to paragraph (d)(2)(vi)(B) of this section.

(B) *Modifications with respect to upper-tier partners of the pass-through partner*. In accordance with forms, instructions, and other guidance provided by the IRS, for purposes of determining and calculating the amount a pass-through partner must pay under paragraph (d)(2)(vi)(A) of this section, the pass-through partner may take into account modifications with respect to its direct and indirect partners to the extent that such modifications are requested by the partnership requesting modification and approved by the IRS under this section.

(vii) *Limitations on amended returns*–(A) *In general*. A relevant partner may not file an amended return or claim for refund that takes into account partnership adjustments except as described in paragraph (d)(2) of this section.

(B) *Further amended returns restricted*. Except as described in paragraph (d)(2)(vii)(C) of this section, if a relevant partner files an amended return under paragraph (d)(2) of this section, or satisfies paragraph (d)(2) of this section by following the alternative procedure under paragraph (d)(2)(x) of this section (the alternative procedure), such partner may not file a subsequent amended return or claim for refund to change the treatment of partnership adjustments taken into account through amended return or the alternative procedure.

(C) *Subsequent returns in the case of changes to partnership adjustments or denial of modification*. Notwithstanding paragraph (d)(2)(vii)(B) of this section, a relevant partner that has previously filed an amended return under paragraph (d)(2) of this section, or satisfied the requirements of paragraph (d)(2) of this section through the alternative procedure, to take partnership adjustments into account may, in accordance with forms, instructions, and other guidance prescribed by the IRS, file a subsequent return or claim for refund if a determination is made by a court or by the IRS that results in a change to the partnership adjustments taken into account in modification under paragraph (d)(2) of this section or a denial of modification by the IRS under paragraph (c)(2)(i) of this section with respect to a modification request under paragraph (d)(2) of this section. Such determinations include a court decision that changes the partnership adjustments for which modification was requested or a settlement between the IRS and the partnership pursuant to which the partnership is not liable for all or a portion of the imputed underpayment for which modification was requested. Any amended return or claim for refund filed under this paragraph (d)(2)(vii) is subject to the period of limitations under section 6511.

(viii) *Penalties*. The applicability of any penalties, additions to tax, or additional amounts that relate to an adjustment to a partnership-related item is determined at the partnership level in accordance with section 6221(a). However, the amount of penalties, additions to tax, and additional amounts a relevant partner must pay under paragraph (d)(2)(ii)(A) of this section for the first affected year and for any modification year is based on the underpayment or understatement of tax, if any, reflected on the amended return filed by the relevant partner under paragraph (d)(2) of this section. For instance, if after taking into account the adjustments, the return of the relevant partner for the first affected year or any modification year reflects an underpayment or an understatement that falls below the applicable threshold for the imposition of a penalty under section 6662(d), no penalty would be due from that relevant partner for such year. Unless forms, instructions or other guidance provided by the IRS allow for an alternative procedure for raising a partner-level defense (as described in § 301.6226–3(d)(3)), a relevant partner may raise a partner-level defense by first paying the penalty, addition to tax, or additional amount with the amended return filed under paragraph (d)(2) of this section and then filing a claim for refund in accordance with forms, instructions, and other guidance.

(ix) *Effect on tax attributes binding*. Any adjustments to the tax attributes of any relevant partner which are affected by modification under paragraph (d)(2) of this section are binding on the relevant partner with respect to the first affected year and all modification years (as defined in paragraph (d)(2)(ii)(B) of this section). A failure to adjust any tax attribute in accordance with this paragraph (d)(2)(ix) is 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. The provisions of section 6222(c) and § 301.6222–1(c) (regarding notification of inconsistent treatment) do not apply with respect to tax attributes under this paragraph (d)(2)(ix).

(x) *Alternative procedure to filing amended returns*–(A) *In general*. A partnership may satisfy the requirements of paragraph (d)(2) of this section by submitting on behalf of a relevant partner, in accordance with forms, instructions, and other guidance provided by the IRS, all information and payment of any tax, penalties, additions to tax, additional amounts, and interest that would be required to be provided if the relevant partner were filing an amended return under paragraph (d)(2) of this section, except as otherwise provided in relevant forms, instructions, and other guidance provided by the IRS. A relevant partner for which the partnership seeks modification under paragraph (d)(2)(x) of this section must agree to take into account, in accordance with forms, instructions, and other guidance provided by the IRS, adjustments to any tax attributes of such relevant partner. A modification request submitted in accordance with the alternative procedure under paragraph (d)(2)(x) of this section is not a claim for refund with respect to any person.

(B) *Modifications with respect to reallocation adjustments*. A submission made in accordance with paragraph (d)(2)(x) of this section with respect to any relevant partner is treated as if such relevant partner filed an amended return for purposes of paragraph (d)(2)(ii)(C) of this section (regarding the requirement that all relevant partners affected by a reallocation must file an amended return to be eligible to for the modification under paragraph (d)(2) of this section) provided the submission is with respect to the first affected year and all modification years of such relevant partner as required under paragraph (d)(2) of this section.

(3) *Tax-exempt partners*–(i) *In general*. A partnership may request modification of an imputed underpayment with respect to partnership adjustments that the partnership demonstrates to the satisfaction of the IRS are allocable to a relevant partner that would not owe tax by reason of its status as a tax-exempt entity (as defined in paragraph (d)(3)(ii) of this section) in the reviewed year (tax-exempt partner).

(ii) *Definition of tax-exempt entity*. For purposes of paragraph (d)(3) of this section, the term *tax-exempt entity* means a person or entity defined in section 168(h)(2)(A), (C), or (D).

(iii) *Modification limited to portion of partnership adjustments for which tax-exempt partner not subject to tax*. Only the portion of the partnership adjustments properly allocated to a tax-exempt partner with respect to which the partner would not be subject to tax for the reviewed year (tax-exempt portion) may form the basis of a modification of the imputed underpayment under paragraph (d)(3) of this section. A modification under paragraph (d)(3) of this section will not be approved by the IRS unless the partnership provides documentation in accordance with paragraph (c)(2) of this section to support the tax-exempt partner's status and the tax-exempt portion of the partnership adjustment allocable to the tax-exempt partner.

(4) *Modification based on a rate of tax lower than the highest applicable tax rate*. A partnership may request modification based on a lower rate of tax for the reviewed year with respect to adjustments that are attributable to a relevant partner that is a C corporation and adjustments with respect to capital gains or qualified dividends that are attributable to a relevant partner who is an individual. In no event may the lower rate determined under the preceding sentence be less than the highest rate in effect for the reviewed year with respect to the type of income and taxpayer. For instance, with respect to adjustments that are attributable to a C corporation, the highest rate in effect for the reviewed year with respect to all C corporations would apply to that adjustment, regardless of the rate that would apply to the C corporation based on the amount of that C corporation's taxable income. For purposes of this paragraph (d)(4), an S corporation is treated as an individual.

(5) *Certain passive losses of publicly traded partnerships*–(i) *In general*. In the case of a publicly traded partnership (as defined in section 469(k)(2)) requesting modification under this section, an imputed underpayment is determined without regard to any adjustment that the partnership demonstrates would be reduced by a specified passive activity loss (as defined in paragraph (d)(5)(ii) of this section) which is allocable to a specified partner (as defined in paragraph (d)(5)(iii) of this section) or qualified relevant partner (as defined in paragraph (d)(5)(iv) of this section).

(ii) *Specified passive activity loss*. A specified passive activity loss carryover amount for any specified partner or qualified relevant partner of a publicly traded partnership is the lesser of the section 469(k) passive activity loss of that partner which is separately determined with respect to such partnership–

(A) At the end of the first affected year (affected year loss); or

(B) At the end of–

(*1*) The specified partner's taxable year in which or with which the adjustment year (as defined in § 301.6241–1(a)(1)) of the partnership ends, reduced to the extent any such partner has utilized any portion of its affected year loss to offset income or gain relating to the ownership or disposition of its interest in such publicly traded partnership during either the adjustment year or any other year; or

(*2*) If the adjustment year has not yet been determined, the most recent year for which the publicly traded partnership has filed a return under section 6031, reduced to the extent any such partner has utilized any portion of its affected year loss to offset income or gain relating to the ownership or disposition of its interest in such publicly traded partnership during any year.

(iii) *Specified partner*. A specified partner is a person that for each taxable year beginning with the first affected year through the person's taxable year in which or with which the partnership adjustment year ends satisfies the following three requirements–

(A) The person is a partner of the publicly traded partnership requesting modification under this section;

(B) The person is an individual, estate, trust, closely held C corporation, or personal service corporation; and

(C) The person has a specified passive activity loss with respect to the publicly traded partnership.

(iv) *Qualified relevant partner*. A *qualified relevant partner* is a relevant partner that meets the three requirements to be a specified partner (as described in paragraphs (d)(5)(iii)(A), (B), and (C) of this section) for each year beginning with the first affected year through the year described in paragraph (d)(5)(ii)(B)(*2*) of this section. Notwithstanding the preceding sentence, an indirect partner of the publicly traded partnership requesting modification under this section may also be a qualified relevant partner under this paragraph (d)(5)(iv) if that indirect partner meets the requirements of paragraph (d)(5)(iii)(B) and (C) of this section for each year beginning with the first affected year through the year described in paragraph (d)(5)(ii)(B)(*2*) of this section.

(v) *Partner notification requirement to reduce passive losses*. If the IRS approves a modification request under paragraph (d)(5) of this section, the partnership must report, in accordance with forms, instructions, or other guidance prescribed by the IRS, to each specified partner the amount of that specified partner's reduction of its suspended passive activity loss carryovers at the end of the adjustment year to take into account the amount of any passive activity losses applied in connection with such modification request. In the case of a qualified relevant partner, the partnership must report, in accordance with forms, instructions, or other guidance prescribed by the IRS, to each qualified relevant partner the amount of that qualified relevant partner's reduction of its suspended passive activity loss carryovers at the end of the taxable year for which the partnership's next return is due to be filed under section 6031 to be taken into account by the qualified relevant partner on the partner's return for the year that includes the end of the partnership's taxable year for which the partnership's next return is due to be filed under section 6031. In the case of an indirect partner that is a qualified relevant partner, the IRS may prescribe additional guidance through forms, instructions, or other guidance to require reporting under this paragraph (d)(5)(v). The reduction in suspended passive activity loss carryovers as reported to a specified partner or qualified relevant partner under this paragraph (d)(5)(v) is a determination of the partnership under subchapter C of chapter 63 and is binding on the specified partners and qualified relevant partners under section 6223.

(6) *Modification of the number and composition of imputed underpayments*–(i) *In general*. A partnership may request modification of the number or composition of any imputed underpayment included in the NOPPA by requesting that the IRS include one or more partnership adjustments in a particular grouping or subgrouping (as described in § 301.6225–1(c) and (d)) or specific imputed underpayments (as described in § 301.6225–1(g)) different from the grouping, subgrouping, or imputed underpayment set forth in the NOPPA. For example, a partnership may request under paragraph (d)(6) of this section that one or more partnership adjustments taken into account to determine a general imputed underpayment set forth in the NOPPA be taken into account to determine a specific imputed underpayment.

(ii) *Request for particular treatment regarding limitations or restrictions*. A modification request under paragraph (d)(6) of this section includes a request that one or more partnership adjustments be treated as if no limitations or restrictions under § 301.6225–1(d) apply and as a result such adjustments may be subgrouped with other adjustments.

(7) *Partnerships with partners that are "qualified investment entities" described in section 860*–(i) *In general*. A partnership may request a modification of an imputed underpayment based on the partnership adjustments allocated to a relevant partner where the modification is based on deficiency dividends distributed as described in section 860(f) by a relevant partner that is a qualified investment entity (QIE) under section 860(b) (which includes both a regulated investment company (RIC) and a real estate investment trust (REIT)). Modification under paragraph (d)(7) of this section is available only to the extent that the deficiency dividends take into account adjustments described in § 301.6225–1 that are also adjustments within the meaning of section 860(d)(1) or (d)(2) (whichever applies).

(ii) *Documentation of deficiency dividend*. The partnership must provide documentation in accordance with paragraph (c) of this section of the "determination" described in section 860(e). Under section 860(e)(2), § 1.860–2(b)(1)(i) of this chapter, and paragraph (d)(8) of this section, a closing agreement entered into by the QIE partner pursuant to section 7121 and paragraph (d)(8) of this section is a determination described in section 860(e), and the date of the determination is the date in which the closing agreement is approved by the IRS. In addition, under section 860(e)(4), a determination also includes a Form 8927, *Determination Under Section 860(e)(4) by a Qualified Investment Entity*, properly completed and filed by the RIC or REIT pursuant to section 860(e)(4). To establish the date of the determination under section 860(e)(4) and the amount of deficiency dividends actually paid, the partnership must provide a copy of Form 976, *Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust*, properly completed by or on behalf of the QIE pursuant to section 860(g), together with a copy of each of the required attachments for Form 976.

(8) *Closing agreements*. A partnership may request modification based on a closing agreement entered into by the IRS and the partnership or any relevant partner, or both if appropriate, pursuant to section 7121. If modification under this paragraph (d)(8) is approved by the IRS, any partnership adjustment that is taken into account under such closing agreement and for which any required payment under the closing agreement is made will not be taken into account in determining the imputed underpayment under § 301.6225–1. Any required payment under the closing agreement may include amounts of tax, including tax under chapters other than chapter 1, interest, penalties, additions to tax and additional amounts. Generally, the IRS will not approve any additional modification under this section with respect to a relevant partner to which a modification under this paragraph (d)(8) has been approved.

(9) *Tax treaty modifications*. A partnership may request a modification under this paragraph (d)(9) with respect to a relevant partner's distributive share of an adjustment to a partnership-related item if, in the reviewed year, the relevant partner was a foreign person who qualified under an income tax treaty with the United

States for a reduction or exemption from tax with respect to such partnership-related item. A partnership requesting modification under this section may also request a treaty modification under this paragraph (d)(9) regardless of the treaty status of its partners if, in the reviewed year, the partnership itself was an entity eligible for such treaty benefits.

(10) *Other modifications*. A partnership may request a modification not otherwise described in paragraph (d) of this section, and the IRS will determine whether such modification is accurate and appropriate in accordance with paragraph (c)(4) of this section. Additional types of modifications and the documentation necessary to substantiate such modifications may be set forth in forms, instructions, or other guidance prescribed by the IRS.

(e) *Modification of adjustments that do not result in an imputed underpayment*. A partnership may request modification of adjustments that do not result in an imputed underpayment (as described in § 301.6225–1(f)(1)(ii)) using modifications described in paragraph (d)(2) of this section (amended returns and the alternative procedure to filing amended returns), paragraph (d)(6) of this section (number and composition of the imputed underpayment), paragraph (d)(8) of this section (closing agreements), or, if applicable, paragraph (d)(10) of this section (other modifications).

(f) *Examples*. The following examples illustrate the rules of this section. For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, each partnership and its relevant partners are calendar year taxpayers, all relevant partners are U.S. persons (unless otherwise stated), the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and no partnership requests modification under this section except as provided in the example.

(1) *Example 1*. Partnership has two partners during its 2019 partnership taxable year: P and S. P is a partnership, and S is an S corporation. P has four partners during its 2019 partnership taxable year: A, C, T and DE. A is an individual, C is a C corporation, T is a trust, and DE is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes. The owner of DE is B, an individual. T has two beneficiaries during its 2019 taxable year: F and G, both individuals. S has 3 shareholders during its 2019 taxable year: H, J, and K, all individuals. For purposes of this section, if Partnership requests modification with respect to A, B, C, F, G, H, J, and K, those persons are all relevant partners (as defined in paragraph (a) of this section). P, S, and DE are not relevant partners (as defined in paragraph (a) of this section) because DE is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes and modification was not requested with respect to P and S.

(2) *Example 2*. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. The IRS mails a NOPPA to Partnership for the 2019 partnership taxable year proposing a single partnership adjustment increasing ordinary income by $100, resulting in a $40 imputed underpayment ($100 multiplied by the 40 percent tax rate). Partner A, an individual, held a 20 percent interest in Partnership during 2019. Partnership timely requests modification under paragraph (d)(2) of this section based on A's filing an amended return for the 2019 taxable year taking into account $20 of the partnership adjustment and paying the tax and interest due attributable to A's share of the increased income and the tax rate applicable to A for the 2019 tax year. No tax attribute in any other taxable year of A is affected by A's taking into account A's share of the partnership adjustment for 2019. In accordance with paragraph (d)(2)(iii) of this section, Partnership's partnership representative provides the IRS with documentation demonstrating that A filed the 2019 return and paid all tax and interest due. The IRS approves the modification and, in accordance with paragraph (b)(2) of this section, the $20 increase in ordinary income allocable to A is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225–1). Partnership's total netted partnership adjustment is reduced to $80 ($100 adjustment less $20 taken into account by A), and the imputed underpayment is reduced to $32 (total netted partnership adjustment of $80 after modification multiplied by 40 percent).

(3) *Example 3*. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. Partnership has two equal partners during its entire 2019 taxable year: an individual, A, and a partnership-partner, B. During all of 2019, B has two equal partners: a tax-exempt entity, C, and an individual, D. The IRS mails a NOPPA to Partnership for its 2019 taxable year proposing a single partnership adjustment increasing Partnership's ordinary income by $100, resulting in a $40 imputed underpayment ($100 total netted partnership adjustment multiplied by 40 percent). Partnership timely requests modification under paragraph (d)(3) of this section with respect to B's partner, C, a tax-exempt entity. In accordance with paragraph (d)(3)(iii) of this section, Partnership's partnership representative provides the IRS with documentation substantiating to the IRS's satisfaction that C held a 25 percent indirect interest in Partnership through its interest in B during the 2019 taxable year, that C was a tax-exempt entity defined in paragraph (d)(3)(ii) of this section during the 2019 taxable year, and that C was not subject to tax with respect to its entire allocable share of the partnership adjustment allocated to B (which is $25 (50 percent x 50 percent x $100)). The IRS approves the modification and, in accordance with paragraph (b)(2) of this section, the $25 increase in ordinary income allocated to C, through B, is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225–1). Partnership's total netted partnership adjustment is reduced to $75 ($100 adjustment less C's share of the adjustment, $25), and the imputed underpayment is reduced to $30 (total netted partnership adjustment of $75, after modification, multiplied by 40 percent).

(4) *Example 4*. The facts are the same as in *Example 3* in paragraph (f)(3) of this section, except $10 of the $25 of the adjustment allocated to C is unrelated business taxable income (UBTI) as defined in section 512 because it is debt-financed income within the meaning of section 514 (no section 512 UBTI modifications apply) with respect to which C would be subject to tax if taken into account by C. As a result, the modification under paragraph (d)(3) of this section with respect to C relates only to $15 of the $25 of ordinary income allocated to C that is not UBTI. Therefore, only a modification of $15 ($25 less $10) of the total $100 partnership adjustment may be approved by the IRS under paragraph (d)(3) of this section and, in accordance with paragraph (b)(2) of this section, excluded when determining the imputed underpayment for Partnership's 2019 taxable year. The total netted partnership adjustment (determined in accordance with § 301.6225–1) is reduced to $85 ($100 less $15), and the imputed underpayment is reduced to $34 (total netted partnership adjustment of $85, after modification, multiplied by 40 percent).

(5) *Example 5*. The facts are the same as in *Example 3* in paragraph (f)(3) of this section, except that Partnership also timely requests modification under paragraph (d)(2) of this section with respect to an amended return filed by B, and, in accordance with (d)(2)(iii) of this section, Partnership's partnership representative provides the IRS with documentation demonstrating that B filed the 2019 return and paid all tax and interest due. B reports 50 percent of the partnership adjustments ($50) on its amended return, and B calculates an amount under paragraph (d)(2)(vi)(A) of this section and § 301.6226–3(e)(4)(iii) that, pursuant to paragraph (d)(2)(vi)(B) of this section, takes into account the modification under paragraph (d)(3) of this section approved by the IRS with respect to B's partner C, a tax-exempt entity. B makes a payment pursuant to paragraph (d)(2)(ii)(A) of this section, and the IRS approves the requested modification. Partnership's total netted partnership adjustment is reduced by $50 (the amount taken into account by B). Partnership's total netted partnership adjustment (determined in accordance with § 301.6225–1) is $50, and the imputed underpayment, after modification, is $20.

(6) *Example 6*. The facts are the same as in *Example 3* in paragraph (f)(3) of this section, except that in addition to the modification with respect to tax-exempt entity C, which reduced the imputed underpayment by excluding from the determination of the imputed underpayment $25 of the $100 partnership adjustment reflected in the NOPPA, Partnership timely requests modification under paragraph (d)(2) of this section with respect to an amended return filed by individual D, and, in accordance with paragraph (d)(2)(iii) of this section, Partnership's partnership representative provides the IRS with

documentation demonstrating that D filed the 2019 return and paid all tax and interest due. D's amended return for D's 2019 taxable year takes into account D's share of the partnership adjustment (50 percent of B's 50 percent interest in Partnership, or $25) and D paid the tax and interest due as a result of taking into account D's share of the partnership adjustment in accordance with paragraph (d)(2) of this section. No tax attribute in any other taxable year of D is affected by D taking into account D's share of the partnership adjustment for 2019. The IRS approves the modification and the $25 increase in ordinary income allocable to D is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225–1). As a result, Partnership's total netted partnership adjustment is $50 ($100, less $25 allocable to C, less $25 taken into account by D), and the imputed underpayment, after modification, is $20.

(7) *Example 7*. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. All of Partnership's partners during its 2019 taxable year are individuals. The IRS mails a NOPPA to Partnership for the 2019 taxable year proposing three partnership adjustments. The first partnership adjustment is an increase to ordinary income of $75 for 2019. The second partnership adjustment is an increase in the depreciation deduction allowed for 2019 of $25, which under § 301.6225–1(d)(2)(i) is treated as a $25 decrease in income. The third adjustment is an increase in long-term capital gain of $10 for 2019. Under the partnership agreement in effect for Partnership's 2019 taxable year, the long-term capital gain and the increase in depreciation would be specially allocated to B and the increase in ordinary income would be specially allocated to A. In accordance with § 301.6225–1(c) and (d), the three adjustments are placed into three separate subgroupings within the residual grouping because the partnership adjustments would not have been netted at the partnership level and would not have been required to be allocated to the partners of the partnership as a single, net partnership-related item for purposes of section 702(a), other provisions of the Code, regulations, forms, instructions, or other guidance prescribed by the IRS. Accordingly, the total netted partnership adjustment is $85 ($75 net positive adjustment to ordinary income plus $10 net positive adjustment to long term capital gain), and the imputed under payment is $34 ($85 multiplied by 40 percent). The net negative adjustment to depreciation is an adjustment that does not result in an imputed underpayment subject to treatment under § 301.6225–3. Partnership requests a modification under paragraph (d)(6) of this section to determine a specific imputed underpayment with respect to the $75 adjustment to ordinary income allocated to A. The specific imputed underpayment is with respect to $75 of the increase in income specially allocated to A and the general imputed underpayment is with respect to $10 of the increase in capital gain and the $25 increase in depreciation deduction specially allocated to B. If the modification is approved by the IRS, the specific imputed underpayment would consist of the $75 increase in ordinary income, and thus the total netted partnership adjustment for the specific imputed underpayment would be $75. The specific imputed underpayment is thus $30 ($75 multiplied by 40 percent). The general imputed underpayment would consist of two adjustments: the long term capital gain adjustment and the depreciation adjustment. The long term capital gain adjustment and the depreciation adjustment would be placed in different subgroupings under § 301.6225–1(d) because they are treated separately under section 702. Accordingly, the long term capital gain adjustment and the depreciation adjustment are not netted, and the long term capital gain adjustment would be a net positive adjustment while the depreciation adjustment would be a net negative adjustment. The long term capital gain net positive adjustment would be the only net positive adjustment, resulting in a total netted partnership adjustment of $10. The general imputed underpayment is $4 ($10 multiplied by 40 percent), and the net negative adjustment to depreciation of $25 would be an adjustment that does not result in an imputed underpayment under § 301.6225–1(f) associated with the general imputed underpayment.

(8) *Example 8*. Partnership has two reviewed year partners, C1 and C2, both of which are C corporations. The IRS mails to Partnership a NOPPA with two adjustments, both based on rental real estate activity. The first adjustment is an increase of rental real estate income of $100 attributable to Property A. The second adjustment is an increase of rental real estate loss of $30 attributable to Property B. The Partnership did not treat the leasing arrangement with respect to Property A and Property B as an appropriate economic unit for purposes of section 469. If the $100 increase in income attributable to Property A and the $30 increase in loss attributable to Property B were included in the same subgrouping and netted, then taking the $30 increase in loss into account would result in a decrease in the amount of the imputed underpayment. Also, the $30 increased loss might be limited or restricted if taken into account by any person under the passive activity rules under section 469. For instance, under section 469, rental activities of the two properties could be treated as two activities, which could limit a partner's ability to claim the loss. In addition to the potential limitations under section 469, there are other potential limitations that might apply if the $30 loss were taken into account by any person. Therefore, in accordance with § 301.6225–1(d), the two adjustments are placed in separate subgroupings within the residual grouping, the total netted partnership adjustment is $100, the imputed underpayment is $40 ($100 x 40 percent), and the $30 increase in loss is an adjustment that does not result in an imputed underpayment under § 301.6225–1(f). Partnership requests modification under paragraph (d)(6) of this section, substantiating to the satisfaction of the IRS that C1 and C2 are publicly traded C corporations, and therefore, the passive activity loss limitations under section 469 of the Code do not apply. Partnership also substantiates to the satisfaction of the IRS that no other limitation or restriction applies that would prevent the grouping of the $100 with the $30 loss. The IRS approves Partnership's modification request and places the $100 of income and the $30 loss into the subgrouping in the residual grouping under the rules described in § 301.6225–1(c)(5). Under § 301.6225–1(e), because the two adjustments are in one subgrouping, they are netted together, resulting in a total netted partnership adjustment of $70 ($100 plus -$30) and an imputed underpayment of $28 ($70 x 40 percent). After modification, none of the adjustments is an adjustment that does not result in an imputed underpayment under § 301.6225–1(f) because the $30 loss is now netted with the $100 of income in a net positive adjustment for the residual grouping.

(g) *Applicability date*–(1) *In general*. Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 6. Section 301.6225–3 is added to read as follows:

§ 301.6225–3 Treatment of partnership adjustments that do not result in an imputed underpayment.

(a) *In general*. Partnership adjustments (as defined in § 301.6241–1(a)(6)) that do not result in an imputed underpayment (as described in § 301.6225–1(f)) are taken into account by a partnership in the adjustment year (as defined in § 301.6241–1(a)(1)) in accordance with paragraph (b) of this section.

(b) *Treatment of adjustments by the partnership*–(1) *In general*. Except as described in paragraphs (b)(2) through (7) of this section, a partnership adjustment that does not result in an imputed underpayment is taken into account as a reduction in non-separately stated income or as an increase in non-separately stated loss for the adjustment year depending on whether the adjustment is to a partnership-related item that is an item of income or loss.

(2) *Separately stated items*. In the case of a partnership adjustment to partnership-related item that is required to be separately stated under section 702, the adjustment is taken into account by the partnership in the adjustment year as a reduction in such separately stated item or as an increase in such separately stated item depending on whether the adjustment is a reduction or an increase to the separately stated item.

(3) *Credits*. In the case of an adjustment to a partnership-related item that is

reported or could be reported by a partnership as a credit on the partnership's return for the reviewed year (as defined in § 301.6241–1(a)(8)), the adjustment is taken into account by the partnership in the adjustment year as a separately stated item.

(4) *Reallocation adjustments*. A partnership adjustment that reallocates a partnership-related item to or from a particular partner or partners that also does not result in an imputed underpayment pursuant to § 301.6225–1(f) is taken into account by the partnership in the adjustment year as a separately stated item or a non-separately stated item, as required by section 702. Except as provided in forms, instructions, and other guidance prescribed by the Internal Revenue Service (IRS), the portion of an adjustment allocated under this paragraph (b)(4) is allocated to adjustment year partners (as defined in § 301.6241–1(a)(2)) who are also reviewed year partners (as defined in § 301.6241–1(a)(9)) with respect to whom the amount was reallocated.

(5) *Adjustments taken into account by partners as part of the modification process*. If, as part of modification under § 301.6225–2, a relevant partner (as defined in § 301.6225–2(a)) takes into account a partnership adjustment that does not result in an imputed underpayment, and the IRS approves the modification, such partnership adjustment is not taken into account by the partnership in the adjustment year in accordance with § 301.6225–1(a).

(6) *Effect of election under section 6226*. If a partnership makes a valid election under § 301.6226–1 with respect to an imputed underpayment, a partnership adjustment that does not result in an imputed underpayment and that is associated with such imputed underpayment as described in § 301.6225–1(g) is taken into account by the reviewed year partners in accordance with § 301.6226–3 and is not taken into account under this section.

(7) *Adjustments taken into account previously by partners*. If, prior to the mailing of a notice of administrative proceeding by the IRS or the filing of an administrative adjustment request by the partnership, a partner has previously taken into account an adjustment that does not result in an imputed underpayment that would have been taken into account under this section, such partnership adjustment is not taken into account by such partner.

(c) *Treatment of adjustment year partners*. The rules under subchapter K of chapter 1 of the Internal Revenue Code with respect to the treatment of partners apply in the case of adjustments taken into account by the partnership under this section. (d) *Examples*. The following examples illustrate the rules of this section. For purposes of these examples, unless otherwise provided, each partnership is subject to the provisions of subchapter C of chapter 63 of the Internal Revenue Code, each partnership and its relevant partners are calendar year taxpayers, all relevant partners are U.S. persons (unless otherwise stated), the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and no partnership requests modification.

(1) *Example 1*. For all of Partnership's 2019, 2020, and 2021 partnership taxable years, Partnership has two equal partners, A and B. The IRS initiates an administrative proceeding with respect to Partnership's 2019 partnership taxable year. The IRS mails a notice of proposed partnership adjustment (NOPPA) to Partnership for the 2019 partnership taxable year proposing a recharacterization adjustment, changing a $100 ordinary loss to a $100 long term capital loss. Under § 301.6225–1, this recharacterization adjustment results in two adjustments: a $100 increase to ordinary income (positive adjustment) and a -$100 decrease in long term capital gain (negative adjustment). Under § 301.6225–1(b), the $100 positive adjustment is the total netted partnership adjustment, which is multiplied by the highest rate of 40 percent, resulting in a $40 imputed underpayment. Under § 301.6225–1(f), the -$100 negative adjustment is an adjustment that does not result in an imputed underpayment and is taken into account in accordance with this section. On March 1, 2021, the IRS mails a notice of final partnership adjustment (FPA), and because Partnership does not file a petition for readjustment with respect to the FPA, the adjustments are finally determined in 2021, and the adjustment year is determined to be 2021 pursuant to § 301.6241–1(a)(1). Pursuant to paragraph (a) of this section, Partnership takes into account the -$100 adjustment that does not result in an imputed underpayment on its 2021 partnership return. In addition to the -$100 adjustment to partnership's 2019 taxable year taken into account under this section, Partnership has an additional $300 in long term capital gain reportable in its 2021 taxable year. The -$100 negative adjustment and the $300 long term capital gain are Partnership's only long term capital gains and losses for its 2021 taxable year. Because the -$100 net negative adjustment is an adjustment to long term capital gain, which is a separately stated item under section 702(a)(2), the -$100 negative adjustment must be taken into account in accordance with paragraph (b)(2) of this section. Partnership includes both the -$100 negative adjustment and the $300 in long term capital gain as separately stated items on its 2021 tax return.

(2) *Example 2*. The facts are the same as in *Example 1* in paragraph (d)(1) of this section, except that the IRS proposes a reallocation adjustment instead of a recharacterization adjustment. The IRS determines that the -$100 ordinary loss that the Partnership allocated equally to A and B should instead all be allocated all to A. The IRS mails a NOPPA for the 2019 partnership taxable year proposing a reallocation adjustment resulting in a $50 increase in ordinary loss allocated to A (negative adjustment) and a $50 decrease in ordinary loss allocated to B (positive adjustment). Because the adjustments are the result of a reallocation, they are placed in separate subgroupings pursuant to § 301.6225–1(d). Because the adjustments are in different subgroupings, the adjustments are not netted under § 301.6225–1(e), resulting in a net negative adjustment of -$50 allocated to A and a net positive adjustment of $50 to B. Pursuant to § 301.6225–1(b), the total netted partnership adjustment includes the $50 net positive adjustment, and the imputed underpayment is $20 ($50 total netted partnership adjustment x 40 percent). Pursuant to § 301.6225–1(f), the -$50 net negative adjustment is an adjustment that does not result in an imputed underpayment and is taken into account in accordance with this section. On March 1, 2021, the IRS mails an FPA, and because Partnership does not file a petition for readjustment with respect to the FPA, the adjustments are finally determined in 2021, and the adjustment year is determined to be 2021 pursuant to § 301.6241–1(a)(1). Pursuant to paragraph (a) of this section, Partnership takes into account the -$50 adjustment that does not result in an imputed underpayment on its 2021 partnership return. In addition to the -$50 net negative adjustment to partnership's 2019 taxable year taken into account under this section, Partnership also has an additional $300 in ordinary income reportable in its 2021 taxable year unrelated to the administrative proceeding with respect to Partnership's 2019 partnership taxable year. Because the -$50 net negative adjustment is due to a reallocation, the adjustment must be taken into account under paragraph (b)(4) of this section. Because the net negative adjustment was determined to have been entirely allocable to A, and because A was a reviewed year partner and is also an adjustment year partner, the net negative adjustment is taken into account by Partnership by allocating the entire adjustment to A on its 2021 tax return. The -$50 negative adjustment does not reduce the $300 in ordinary income.

(e) *Applicability date*–(1) *In general*. Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018,

for which a valid election under § 301.9100–22 is in effect.

Par. 7. Section 301.6226–1 is added to read as follows:

§ 301.6226–1 Election for an alternative to the payment of the imputed underpayment.

(a) *In general.* A partnership may elect under this section an alternative to the payment by the partnership of an imputed underpayment determined under section 6225. In addition, a partnership making a valid election under paragraph (c) of this section is no longer liable for the imputed underpayment (as defined in § 301.6241–1(a)(3)) to which the election applies. If a notice of final partnership adjustment (FPA) mailed under section 6231 includes more than one imputed underpayment (as described in § 301.6225–1(g)), a partnership may make an election under this section with respect to one or more imputed underpayments included in the FPA.

(b) *Effect of election*–(1) *Reviewed year partners.* If a partnership makes a valid election under this section with respect to any imputed underpayment, the reviewed year partners (as defined in § 301.6241–1(a)(9)) must take into account their share of the partnership adjustments (as defined in § 301.6241–1(a)(6)) that are associated with that imputed underpayment and are liable for any tax, penalties, additions to tax, additional amounts, and interest as described in § 301.6226–3. See § 301.6226–2(f) regarding the determination of each reviewed year partner's share of the partnership adjustments, including the effect of any modification approved by the Internal Revenue Service (IRS) under § 301.6225–2.

(2) *Partnership.* A partnership making a valid election under this section is not liable for the imputed underpayment to which the election applies (and no assessment of tax, levy, or proceeding in any court for the collection of such imputed underpayment may be made against such partnership). Any adjustments that do not result in an imputed underpayment described in § 301.6225–1(f) that are associated with an imputed underpayment (as described in § 301.6225–1(g)) for which an election under this section is made are not taken into account by the partnership in the adjustment year (as defined in § 301.6241–1(a)(1)) and instead each reviewed year partners' share of the adjustments determined in accordance with § 301.6226–2(f) must be included on the statement described in § 301.6226–2.

(c) *Time, form, and manner for making the election*–(1) *In general.* An election under this section is valid only if all of the provisions of this section and § 301.6226–2 (regarding statements filed with the IRS and furnished to reviewed year partners) are satisfied. An election under this section is valid until the IRS determines that the election is invalid. An election under this section may only be revoked with the consent of the IRS.

(2) *Time for making the election.* An election under this section must be filed within 45 days of the date the FPA is mailed by the IRS. The time for filing such an election may not be extended.

(3) *Form and manner of the election*–(i) *In general.* An election under this section must be signed by the partnership representative and filed in accordance with forms, instructions, and other guidance prescribed by the IRS and include the information specified in paragraph (c)(3)(ii) of this section.

(ii) *Contents of the election.* An election under this section must include the following correct information–

(A) The name, address, and taxpayer identification number (TIN) of the partnership;

(B) The taxable year to which the election relates;

(C) A copy of the FPA to which the election relates;

(D) In the case of an FPA that includes more than one imputed underpayment, identification of the imputed underpayment to which the election applies;

(E) The name and TIN (or alternative form of identification as prescribed by forms, instructions, or other guidance) of each reviewed year partner of the partnership;

(F) The current or last address of each reviewed year partner that is known to the partnership; and

(G) Any other information prescribed by the IRS in forms, instructions, and other guidance.

(d) *Determining an election is invalid.* The IRS may determine an election to be invalid without first notifying the partnership or providing the partnership an opportunity to correct any failure to satisfy all of the provisions of this section and § 301.6226–2. If an election under this section is determined by the IRS to be invalid, the IRS will notify the partnership and the partnership representative within 30 days of the determination that the election is invalid and the reason for the determination that the election is invalid. If the IRS makes a determination that an election under this section is invalid, section 6225 applies with respect to the imputed underpayment as if the election was never made, the IRS may assess the imputed underpayment against the partnership (without regard to the limitations under section 6232(b)), and the partnership must pay the imputed underpayment under section 6225 and any penalties and interest under section 6233. The IRS may not determine that an election is invalid based on errors timely corrected by the partnership in accordance with § 301.6226–2(d).

(e) *Binding nature of statements.* The election under this section, which includes filing and furnishing statements described in § 301.6226–2, are actions of the partnership under section 6223 and, unless determined otherwise by the IRS, the partner's share of the adjustments and the applicability of any penalties, additions to tax, and additional amounts as set forth in the statement are binding on the partner pursuant to section 6223. Accordingly, a partner may not treat any partnership-related items (as defined in § 301.6241–1(a)(6)(ii)) reflected on a statement described in § 301.6226–2 on the partner's return inconsistently with how those items are treated on the statement that is filed with the IRS. See § 301.6222–1(c)(2) (regarding partnership-related items the treatment of which a partner is bound to under section 6223).

(f) *Coordination with section 6234 regarding judicial review.* Nothing in this section affects the rules regarding judicial review of a partnership adjustment. Accordingly, a partnership that makes an election under this section is not precluded from filing a petition under section 6234(a). See § 301.6226–2(b)(3)(iii).

(g) *Applicability date*–(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after De-

cember 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 8. Section 301.6226–2 is added to read as follows:

§ 301.6226–2 Statements furnished to partners and filed with the IRS.

(a) *In general*. A partnership that makes an election under § 301.6226–1 must furnish to each reviewed year partner (as defined in § 301.6241–1(a)(9)) and file with the Internal Revenue Service (IRS) a statement that includes the items required by paragraphs (e) and (f) of this section with respect to each reviewed year partner's share of partnership adjustments (as defined in § 301.6241–1(a)(6)) associated with the imputed underpayment for which an election under § 301.6226–1 is made. The statements furnished to the reviewed year partners under this section are in addition to, and must be filed and furnished separate from, any other statements required to be filed with the IRS and furnished to partners, including any statements under section 6031(b). A separate statement under this section must be furnished to each reviewed year partner with respect to each reviewed year (as defined in § 301.6241–1(a)(8)) subject to an election under § 301.6226–1. A failure to furnish a correct statement in accordance with this section is subject to penalty under section 6722. See section 6724(d)(2).

(b) *Time and manner for furnishing the statements to partners*–(1) *In general*. The statements described in paragraph (a) of this section must be furnished to the reviewed year partners no later than 60 days after the date all of the partnership adjustments to which the statement relates are finally determined. The partnership adjustments are finally determined upon the later of:

(i) The expiration of the time to file a petition under section 6234; or

(ii) If a petition under section 6234 is filed, the date when the court's decision becomes final.

(2) *Address used for reviewed year partners*. The partnership must furnish the statements described in paragraph (a) of this section to each reviewed year partner in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership mails the statement, it must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. If a statement is returned to the partnership as undeliverable, the partnership must undertake reasonable diligence to identify a correct address for the reviewed year partner to which the statement relates and, if a correct address is identified, mail the statement to the reviewed year partner at the correct address.

(3) *Examples*. The following examples illustrate the rules of this paragraph (b).

(i) *Example 1*. During Partnership's 2020 taxable year, A, an individual, was a partner in Partnership and had an address at 123 Main St. On February 1, 2021, A sells his interest in Partnership and informs Partnership that A moved to 456 Broad St. On March 15, 2021, Partnership mails A's statement under section 6031(b) for the 2020 taxable year to 456 Broad St. On June 1, 2023, A moves again but does not inform Partnership of A's new address. In 2023, the IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year and mails a notice of final partnership adjustment (FPA) to Partnership for that year that includes a single imputed underpayment. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment and on May 31, 2024, timely mails a statement described in paragraph (a) of this section to A at 456 Broad St. Although the statement was mailed to the last address for A that was known to Partnership, it is returned to Partnership as undeliverable because unknown to Partnership, A had moved. After undertaking reasonable diligence to obtain the correct address of A, Partnership is unable to ascertain the correct address. Therefore, pursuant to paragraph (b)(2) of this section, Partnership properly furnished the statement to A when it mailed the statement to 456 Broad St.

(ii) *Example 2*. The facts are the same as in *Example 1* in paragraph (b)(3)(i) of this section, except that A lives at 789 Forest Ave during all of 2024 and reasonable diligence would have revealed that 789 Forest Ave is the correct address for A, but Partnership did not undertake such diligence. Because the statement was returned as undeliverable and Partnership did not undertake reasonable diligence to obtain the correct address for A, Partnership failed to properly furnish the statement with respect to A pursuant to paragraph (b)(2) of this section.

(iii) *Example 3*. Partnership is a calendar year taxpayer. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year. On January 1, 2024, the IRS mails an FPA with respect to the 2020 taxable year to Partnership that includes a single imputed underpayment. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment. Partnership timely files a petition for readjustment under section 6234 with the Tax Court. The IRS prevails, and the Tax Court sustains all of the adjustments in the FPA with respect to the 2020 taxable year. The time to appeal the Tax Court decision expires, and the Tax Court decision becomes final on April 10, 2025. Under paragraph (b)(1)(ii) of this section, the adjustments in the FPA are finally determined on April 10, 2025, and Partnership must furnish the statements described in paragraph (a) of this section to its reviewed year partners and electronically file the statements with the IRS no later than June 9, 2025. See paragraph (c) of this section for the rules regarding filing the statements with the IRS.

(c) *Time and manner for filing the statements with the IRS*. No later than 60 days after the date the partnership adjustments are finally determined (as described in paragraph (b)(1) of this section), the partnership must electronically file with the IRS the statements that the partnership furnishes to each reviewed year partner under this section, along with a transmittal that includes a summary of the statements filed and such other information required in forms, instructions, and other guidance prescribed by the IRS.

(d) *Correction of statements*–(1) *In general*. A partnership corrects an error in a statement furnished under paragraph (b) of this section or filed under paragraph (c) of this section by filing the corrected statement with the IRS in the manner prescribed in paragraph (c) of this section and furnishing a copy of the corrected statement to the reviewed year partner to whom the statement relates in accordance with the forms, instructions, and other guidance prescribed by the IRS.

(2) *Error discovered by partnership*–(i) *Discovery within 60 days of statement due date*. If a partnership discovers an error in a statement within 60 days of the due date for furnishing the statements to partners and filing the statements with the IRS (as described in paragraphs (b) and (c) of this section and § 301.6226–3(e)(3)(ii)), the partnership must correct the error in accordance with paragraph (d)(1) of this section and does not have to seek consent of the IRS prior to doing so.

(ii) *Error discovered more than 60 days after statement due date*. If a partnership discovers an error more than 60 days after the due date for furnishing the statements to partners and filing the statements with the IRS (as described in paragraphs (b) and (c) of this section and § 301.6226–3(e)(3)(ii)), the partnership may only correct the error after receiving consent of the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS. The partnership may not furnish corrected statements unless it receives consent of the IRS to make the correction.

(3) *Error discovered by the IRS*. If the IRS discovers an error in the statements furnished or filed under paragraphs (b) and (c) of this section and § 301.6226–3(e)(3) or the IRS cannot determine whether the statements furnished or filed by the partnership are correct because of a failure by the partnership to comply with any requirement under this section or § 301.6226–3(e), the IRS may require the partnership to correct such errors in accordance with paragraph (d)(1) of this section or to provide additional information as necessary. Failure by the partnership to correct an error or to provide information when required by the IRS may be treated by the IRS as a failure to properly furnish correct statements to partners and file the correct statements with the IRS as described in paragraphs (b) and (c) of this section or in § 301.6226–3(e)(3). Whether the IRS requires the partnership to correct any errors discovered by the IRS or provide additional information is discretionary on the part of the IRS and the IRS is under no obligation to require the partnership to provide additional information or to correct any errors discovered or brought to the IRS's attention at any time.

(4) *Adjustments in the corrected statements taken into account by the reviewed year partners*. The adjustments included on a corrected statement are taken into account by a reviewed year partner in accordance with § 301.6226–3 for the reporting year (as defined in § 301.6226–3(a)).

(e) *Content of the statements*. Each statement described in paragraph (a) of this section must include the following correct information:

(1) The name and TIN (or alternative form of identification as prescribed by forms, instructions, or other guidance) of the reviewed year partner to whom the statement is being furnished;

(2) The current or last address of the reviewed year partner that is known to the partnership;

(3) The reviewed year partner's share of items as originally reported for the reviewed year to the partner on statements furnished to the partner under section 6031(b) and, if applicable, section 6227;

(4) The reviewed year partner's share of partnership adjustments determined under paragraph (f)(1) of this section;

(5) Modifications approved by the IRS with respect to the reviewed year partner (or with respect to any indirect partner (as defined in § 301.6241–1(a)(4)) that holds its interest in the partnership through its interest in the reviewed year partner);

(6) The applicability of any penalty, addition to tax, or additional amount determined at the partnership level that relates to any adjustments allocable to the reviewed year partner and the adjustments to which the penalty, addition to tax, or additional amount relates, the section of the Internal Revenue Code (Code) under which each penalty, addition to tax, or additional amount is imposed, and the applicable rate of each penalty, addition to tax, or additional amount determined at the partnership level;

(7) The date the statement is furnished to the reviewed year partner;

(8) The partnership taxable year to which the adjustments relate; and

(9) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(f) *Determination of each partner's share of adjustments*–(1) *Adjustments and other amounts*–(i) *In general*. Except as described in paragraph (f)(1)(ii) or (iii) or (f)(2) of this section, the adjustments set forth in the statement described in paragraph (a) of this section are reported to the reviewed year partner in the same manner as each adjusted partnership-related item was originally allocated to the reviewed year partner on the partnership return for the reviewed year.

(ii) *Adjusted partnership-related item not reported on the partnership's return for the reviewed year*. Except as described in paragraph (f)(1)(iii) of this section, if the adjusted partnership-related item was not reported on the partnership return for the reviewed year, each reviewed year partner's share of the adjustments must be determined in accordance with how such partnership-related items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement.

(iii) *Adjustments that specifically allocate items*. If an adjustment involves an allocation of a partnership-related item to a specific partner or in a specific manner, including a reallocation of such an item, the reviewed year partner's share of the adjustment set forth in the statement is determined in accordance with the adjustment as finally determined (as described in paragraph (b)(1) of this section).

(2) *Treatment of modifications disregarded*. Any modifications approved by the IRS with respect to the reviewed year partner (or with respect to any indirect partner that holds its interest in the partnership through its interest in the reviewed year partner) under § 301.6225–2 are disregarded for purposes of determining each partner's share of the adjustments under paragraph (f)(1) of this section.

(g) *Coordination with other provisions under subtitle A of the Code*–(1) *Statements furnished to qualified investment entities described in section 860*. If a reviewed year partner is a qualified investment entity within the meaning of section 860(b) and the partner receives a statement described in paragraph (a) of this section, the partner may be able to avail itself of the deficiency dividend procedure described in § 301.6226–3(b)(4).

(2) *Liability for tax under section 7704(g)(3)*. An election under this section has no effect on a partnership's liability for any tax under section 7704(g)(3) (regarding the exception for electing 1987 partnerships from the general rule that certain publicly traded partnerships are treated as corporations).

(3) *Adjustments subject to chapters 3 and 4 of the Internal Revenue Code*. A partnership that makes an election under § 301.6226–1 with respect to an imputed underpayment must pay the amount of tax required to be withheld under chapter 3 or chapter 4, if any, in accordance with § 301.6241–6(b)(4).

(h) *Applicability date*–(1) *In general*. Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after De-

cember 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 9. Section 301.6226–3 is added to read as follows:

§ 301.6226–3 Adjustments taken into account by partners.

(a) *Effect of taking adjustments into account on tax imposed by chapter 1*. Except as otherwise provided in this section, the tax imposed by chapter 1 of the Internal Revenue Code (chapter 1 tax) for each reviewed year partner (as defined in § 301.6241–1(a)(9)) for the taxable year that includes the date a statement was furnished in accordance with § 301.6226–2 (the reporting year) is increased by the additional reporting year tax, or if the additional reporting year tax is less than zero, decreased by such amount. The additional reporting year tax is the aggregate of the correction amounts (determined in accordance with paragraph (b) of this section). In addition to being liable for the additional reporting year tax, a reviewed year partner must also calculate and pay for the reporting year any penalties, additions to tax, and additional amounts (as determined under paragraph (d) of this section). Finally, a reviewed year partner must also calculate and pay for the reporting year any interest (as determined under paragraph (c) of this section).

(b) *Determining the aggregate of the correction amounts*–(1) *In general*. For purposes of paragraph (a) of this section, the aggregate of the correction amounts is the sum of the correction amounts described in paragraphs (b)(2) and (3) of this section. A correction amount under paragraph (b)(2) or (3) of this section may be less than zero, and any correction amount that is less than zero may reduce any other correction amount with the result that the aggregate of the correction amounts under this paragraph (b)(1) may also be less than zero. However, nothing in this section entitles any partner to a refund of chapter 1 tax to which such partner is not entitled. See paragraphs (c) and (d) of this section requiring a separate determination of interest and penalties, additions to tax, and additional amounts on the correction amount for each applicable taxable year (as defined in paragraph (c)(1) of this section) without regard to the correction amount for any other applicable taxable year.

(2) *Correction amount for the first affected year*–(i) *In general*. The correction amount for the taxable year of the partner that includes the end of the reviewed year (the first affected year) is the amount by which the reviewed year partner's chapter 1 tax would increase or decrease for the first affected year if the partner's taxable income for such year was recomputed by taking into account the reviewed year partner's share of the partnership adjustments (as defined in § 301.6241–1(a)(6)) reflected on the statement described in § 301.6226–2 with respect to the partner.

(ii) *Calculation of the correction amount for the first affected year*. The correction amount is the amount of chapter 1 tax that would have been imposed for the first affected year if the items as adjusted in the statement described in § 301.6226–2 had been reported as such on the return for the first affected year less the sum of:

(A) The amount of chapter 1 tax shown by the partner on the return for the first affected year (which includes amounts shown on an amended return for such year, including an amended return filed under section 6225(c)(2) by the reviewed year partner); plus

(B) Amounts not included in paragraph (b)(2)(ii)(A) of this section but previously assessed or collected (including the amounts defined in § 1.6664–2(d) of this chapter and any amounts paid by the partner in accordance with § 301.6225–2); less

(C) The amount of rebates made (as defined in § 1.6664–2(e) of this chapter).

(iii) *Formulaic expression of the correction amount for the first affected year*. The correction amount also may be expressed as–

Correction amount = A – (B + C –D)

Where:

A = the amount of chapter 1 tax that would have been imposed had the items as adjusted been properly reported on the return for the first affected year;

B = the amount shown as chapter 1 tax on the return for the first affected year (taking into account amended returns);

C = amounts previously assessed or collected; and

D = the amount of rebates made.

(3) *Correction amount for the intervening years*–(i) *In general*. The correction amount for all taxable years after the first affected year and before the reporting year (the intervening years) is the aggregate of the correction amounts determined for each intervening year. Determining the correction amount for each intervening year is a year-by-year determination. The correction amount for each intervening year is the amount by which the reviewed year partner's chapter 1 tax for such year would increase or decrease if the partner's taxable income for such year was recomputed by taking into account any adjustments to tax attributes (as defined in § 301.6241–1(a)(10)) of the partner under paragraph (b)(3) of this section.

(ii) *Calculation of the correction amount for the intervening years*. The correction amount for each intervening year is the amount of chapter 1 tax that would have been imposed for the intervening year if any tax attribute of the partner for the intervening year had been adjusted after taking into account the reviewed year partner's share of the adjustments for the first affected year as described in paragraph (b)(2) of this section (and if any tax attribute of the partner for the intervening year had been adjusted, after taking into account any adjustments to tax attributes of the partner in any prior intervening year(s)) exceeds less the sum of–

(A) The amount of chapter 1 tax shown by the partner on the return for the intervening year (which includes amounts shown on an amended return for such year, including an amended return filed under section 6225(c)(2) by a reviewed year partner); plus

(B) Amounts not included in paragraph (b)(3)(ii)(A) of this section but previously or collected (including the amounts defined in § 1.6664–2(d) of this chapter and any amounts paid by the partner in accordance with § 301.6225–2); less

(C) The amount of rebates made (as defined in § 1.6664–2(e) of this chapter).

(iii) *Formulaic expression of the correction amount for the intervening years*.

The correction amount also may be expressed as–

Correction amount = A – (B + C –D)

Where:

A = the amount of chapter 1 tax that would have been imposed for the intervening year;

B = the amount shown as chapter 1 tax on the return for the intervening year (taking into account amended returns);

C = amounts previously assessed or collected; and

D = the amount of rebates made.

(4) *Coordination of sections 860 and 6226*. If a qualified investment entity (QIE) within the meaning of section 860(b) receives a statement described in § 301.6226–2(a) and correctly makes a determination within the meaning of section 860(e)(4) that one or more of the adjustments reflected in the statement is an adjustment within the meaning of section 860(d) with respect to that QIE for a taxable year, the QIE may distribute deficiency dividends within the meaning of section 860(f) for that taxable year and avail itself of the deficiency dividend procedures set forth in section 860. If the QIE utilizes the deficiency dividend procedures with respect to adjustments in a statement described in § 301.6226–2(a), the QIE may claim a deduction for deficiency dividends against the adjustments furnished to the QIE in the statement in calculating any correction amounts under paragraphs (b)(2) and (3) of this section, and interest on such correction amounts under paragraph (c) of this section, to the extent that the QIE makes deficiency dividend distributions under section 860(f) and complies with all requirements of section 860 and the regulations under part 1 of this chapter.

(c) *Interest*–(1) *Interest on the correction amounts*. Interest on the correction amounts determined under paragraph (b) of this section is the aggregate of all interest calculated for each applicable taxable year in which there was a correction amount greater than zero at the rate set forth in paragraph (c)(3) of this section. For each applicable taxable year, interest on the correction amount is calculated from the due date (without extension) of the reviewed year partner's return for such applicable taxable year until the amount is paid. For purposes of this paragraph (c)(1), the term *applicable taxable year* means the reviewed year partner's taxable year affected by taking into account adjustments as described in paragraph (b) of this section (for instance, the first affected year and any intervening year in which there is a correction amount greater than zero). For purposes of calculating interest under this paragraph (c), a correction amount under paragraph (b)(2) or (3) of this section for an applicable taxable year that is less than zero does not reduce the correction amount for any other applicable taxable year.

(2) *Interest on penalties*. Interest on any penalties, additions to tax, or additional amounts determined under paragraph (d) of this section is calculated at the rate set forth in paragraph (c)(3) of this section from the due date (including any extension) of the reviewed year partner's return for the applicable taxable year until the amount is paid.

(3) *Rate of interest*. For purposes of paragraph (c) of this section, interest is calculated using the underpayment rate under section 6621(a)(2) by substituting "5 percentage points" for "3 percentage points" in section 6621(a)(2)(B).

(d) *Penalties*–(1) *Applicability determined at the partnership level*. In the case of a partnership that makes an election under section 6226, the applicability of any penalty, addition to tax, and additional amount that relates to an adjustment to any partnership-related item is determined at the partnership level in accordance with section 6221(a). The partnership's reviewed year partners are liable for such penalties, additions to tax, and additional amounts as determined under paragraph (d)(2) of this section.

(2) *Amount calculated at partner level*. A reviewed year partner calculates the amount of any penalty, addition to tax, or additional amount relating to the partnership adjustments taken into account under paragraph (b)(1) of this section as if the correction amount were an underpayment or understatement of the reviewed year partner for the first affected year or intervening year, as applicable. The calculation of any penalty, addition to tax, or additional amount is based on the characteristics of, and facts and circumstances applicable to, the reviewed year partner for the first affected year or intervening year, as applicable after taking into account the partnership adjustments reflected on the statement. If after taking into account the partnership adjustments in accordance with this section, the reviewed year partner does not have an underpayment, or has an understatement that falls below the applicable threshold for the imposition of a penalty, no penalty is due from that reviewed year partner under this paragraph (d)(2). For penalties in the case of a pass-through partner that makes a payment under paragraph (e)(4) of this section, see paragraph (e)(4)(iv) of this section.

(3) *Partner-level defenses to penalties*. A reviewed year partner (including a pass-through partner (as defined in § 301.6241–1(a)(5))) claiming that a penalty, addition to tax, or additional amount that relates to a partnership adjustment reflected on a statement described in § 301.6226–2 (or paragraph (e)(3) of this section) is not due because of a partner-level defense must first pay the penalty and file a claim for refund for the reporting year. Partner-level defenses are limited to those that are personal to the reviewed year partner (for example, a reasonable cause and good faith defense under section 6664(c) that is based on the facts and circumstances applicable to the partner).

(e) *Pass-through partners*–(1) *In general*. Except as provided in paragraph (e)(6) of this section, if a pass-through partner is furnished a statement described in § 301.6226–2 (including a statement described in paragraph (e)(3) of this section) with respect to adjustments of a partnership that made an election under § 301.6226–1 (audited partnership), the pass-through partner must file with the IRS a partnership adjustment tracking report in accordance with forms, instructions, or other guidance prescribed by the IRS on or before the due date described in paragraph (e)(3)(ii) of this section, and file and furnish statements in accordance with paragraph (e)(3) of this section. The pass-through partner must comply with paragraph (e) of this section with respect to each statement furnished to the pass-through partner.

(2) *Failure to file and furnish required documents*–(i) *Failure to timely file and furnish statements*. If any pass-through partner fails to timely file and furnish cor-

rect statements in accordance with paragraph (e)(3) of this section, the pass-through partner must compute and pay an imputed underpayment, as well as any penalties, additions to tax, additional amounts, and interest with respect to the adjustments reflected on the statement furnished to the pass-through partner in accordance with paragraph (e)(4) of this section. The IRS may assess such imputed underpayment against such pass-through partner without regard to the limitations under section 6232(b). See § 301.6232–1(c)(2). A failure to furnish statements in accordance with paragraph (e)(3) of this section is treated as a failure to timely pay an imputed underpayment required under paragraph (e)(4)(i) of this section, unless the pass-through partner computes and pays an imputed underpayment in accordance with paragraph (e)(4) of this section. See section 6651(i).

(ii) *Failures relating to partnership adjustment tracking report*. Failure to timely file the partnership adjustment tracking report as required in paragraph (e)(1) of this section, or filing such report without showing the information required under paragraph (e)(1) of this section, is subject to the penalty imposed by section 6698.

(3) *Furnishing statements to partners*–(i) *In general*. A pass-through partner described in paragraph (e)(1) of this section must furnish a statement that includes the items required by paragraph (e)(3)(iii) of this section to each partner that held an interest in the pass-through partner at any time during the taxable year of the pass-through partner to which the adjustments in the statement furnished to the pass-through partner relate (affected partner). The statements described in this paragraph (e)(3) must be filed with the IRS by the due date prescribed in paragraph (e)(3)(ii) of this section. Except as otherwise provided in paragraphs (e)(3)(ii), (iii), and (v) of this section, the rules applicable to statements described in § 301.6226–2 are applicable to statements described in this paragraph (e)(3).

(ii) *Time for filing and furnishing the statements*. In accordance with forms, instructions, and other guidance prescribed by the IRS, the pass-through partner must file with the IRS and furnish to its affected partners the statements described in paragraph (e)(3) of this section no later than the extended due date for the return for the adjustment year (as defined in § 301.6241–1(a)(1)) of the audited partnership. For purposes of this section, the extended due date is the extended due date under section 6081 regardless of whether the audited partnership is required to file a return for the adjustment year or timely files a request for an extension under section 6081.

(iii) *Contents of statements*. Each statement described in paragraph (e)(3) of this section must include the following correct information–

(A) The name and taxpayer identification number (TIN) of the audited partnership;

(B) The adjustment year of the audited partnership;

(C) The extended due date for the return for the adjustment year of the audited partnership (as described in paragraph (e)(3)(ii) of this section);

(D) The date on which the audited partnership furnished its statements required under § 301.6226–2(b);

(E) The name and TIN of the partnership that furnished the statement to the pass-through partner if different from the audited partnership;

(F) The name and TIN of the pass-through partner;

(G) The pass-through partner's taxable year to which the adjustments reflected on the statements described in paragraph (e)(3) of this section relates;

(H) The name and TIN (or alternative form of identification as prescribed by forms, instructions, or other guidance) of the affected partner to whom the statement is being furnished;

(I) The current or last address of the affected partner that is known to the pass-through partner;

(J) The affected partner's share of items as originally reported to such partner under section 6031(b) and, if applicable, section 6227, for the taxable year to which the adjustments reflected on the statement furnished to the pass-through partner relate;

(K) The affected partner's share of partnership adjustments determined under § 301.6226–2(f)(1) as if the affected partner were the reviewed year partner and the pass-through partner were the partnership;

(L) Modifications approved by the IRS with respect to the affected partner that holds its interest in the audited partnership through the pass-through partner;

(M) The applicability of any penalties, additions to tax, or additional amounts determined at the audited partnership level that relate to any adjustments allocable to the affected partner and the adjustments allocated to the affected partner to which such penalties, additions to tax, or additional amounts relate, the section of the Internal Revenue Code under which each penalty, addition to tax, or additional amount is imposed, and the applicable rate of each penalty, addition to tax, or additional amount; and

(N) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(iv) *Affected partner must take into account the adjustments*. A statement furnished to an affected partner in accordance with paragraph (e)(3) of this section is treated as if it were a statement described in § 301.6226–2. An affected partner that is a pass-through partner must take into account the adjustments reflected on such a statement in accordance with this paragraph (e). An affected partner that is not a pass-through partner must take into account the adjustments reflected on such a statement in accordance with this section by treating references to "reviewed year partner" as "affected partner". For purposes of this paragraph (e)(3)(iv), an affected partner that is not a pass-through partner takes into account the adjustments in accordance with this section by determining its reporting year based on the date upon which the audited partnership furnished its statements to its reviewed year partners (as described in paragraph (a) of this section). No addition to tax under section 6651 related to any additional reporting year tax will be imposed if an affected partner that is not a pass-through partner reports and pays the additional reporting year tax within 30 days of the extended due date for the return for the adjustment year of the audited partnership (as described in paragraph (e)(3)(ii) of this section).

(v) *Adjustments subject to chapters 3 and 4 of the Internal Revenue Code.* If a pass-through partner furnishes statements to its affected partners in accordance with paragraph (e)(3) of this section, the pass-through partner must comply with the requirements of § 301.6241–6(b)(4), and an affected partner must comply with the requirements of paragraph (f) of this section. For purposes of applying both § 301.6241–6(b)(4) and paragraph (f) of this section, as appropriate, references to the "partnership" should be replaced with references to the "pass-through partner"; references to the "reviewed year partner" should be replaced with references to the "affected partner"; references to the statement required under paragraph (a) of this section and its due date should be replaced with references to the statement required under paragraph (e)(3) of this section and its due date described in paragraph (e)(3)(ii) of this section; references to the "reporting year" should be read in accordance with paragraph (e)(3)(iv) of this section; and references to the partnership return should be read as references to the return for the adjustment year of the audited partnership as described in paragraph (e)(3)(ii) of this section.

(4) *Pass-through partner pays an imputed underpayment*–(i) *In general*. If a pass-through partner described in paragraph (e)(1) of this section does not furnish statements in accordance with paragraph (e)(3) of this section, the pass-through partner must compute and pay an imputed underpayment determined under paragraph (e)(4)(iii) of this section. The pass-through partner must also pay any penalties, additions to tax, additional amounts, and interest as determined under paragraph (e)(4)(iv) of this section. A failure to timely pay an imputed underpayment required under this paragraph (e)(4) is subject to penalty under section 6651(i).

(ii) *Time of payment*. A pass-through partner must file a partnership adjustment tracking report and compute and pay the imputed underpayment and any penalties, additions to tax, additional amounts, and interest, as described in paragraph (e)(4)(i) of this section, in accordance with forms, instructions, and other guidance no later than the extended due date for the return for the adjustment year of the audited partnership.

(iii) *Computation of the imputed underpayment*. The imputed underpayment under paragraph (e)(4)(i) of this section is computed in the same manner as an imputed underpayment under section 6225 and § 301.6225–1, except that adjustments reflected on the statement furnished to the pass-through partner under § 301.6226–2 are treated as partnership adjustments (as defined in § 301.6241–1(a)(6)) for the first affected year. Any modification approved by the IRS under § 301.6225–2 with respect to the pass-through partner (including any modifications with respect to a relevant partner (as defined in § 301.6225–2(a)) that holds its interest in the audited partnership through its interest in the pass-through partner) reflected on the statement furnished to the pass-through partner under § 301.6226–2 (or paragraph (e)(3) of this section) is taken into account in calculating the imputed underpayment under this paragraph (e)(4)(iii). Any modification that was not approved by the IRS under § 301.6225–2 may not be taken into account in calculating the imputed underpayment under this paragraph (e)(4)(iii).

(iv) *Penalties and interest*–(A) *Penalties*. A pass-through partner must compute and pay any applicable penalties, additions to tax, and additional amounts on the imputed underpayment calculated under paragraph (e)(4)(iii) of this section as if such amount were an imputed underpayment for the pass-through partner's first affected year. See § 301.6233(a)–1(c).

(B) *Interest*. A pass-through partner must pay interest on the imputed underpayment calculated under paragraph (e)(4)(iii) of this section in accordance with paragraph (c) of this section as if such imputed underpayment were a correction amount for the first affected year.

(v) *Adjustments that do not result in an imputed underpayment*. Adjustments taken into account under paragraph (e)(4) of this section that do not result in an imputed underpayment (as defined in § 301.6225–1(f)) are taken into account by the pass-through partner in accordance with § 301.6225–3 in the taxable year of the pass-through partner that includes the date the imputed underpayment required under paragraph (e)(4)(i) of this section is paid. If, after making the computation described in paragraph (e)(4)(iii) of this section, no imputed underpayment exists and therefore no payment is required under paragraph (e)(4)(i) of this section, the adjustments that did not result in an imputed underpayment are taken into account by the pass-through partner in accordance with § 301.6225–3 in the taxable year of the pass-through partner that includes the date the statement described in § 301.6226–2 (or paragraph (e)(3) of this section) is furnished to the pass-through partner.

(vi) *Coordination with chapters 3 and 4*. If a pass-through partner pays an imputed underpayment described in paragraph (e)(4)(i) of this section, § 301.6241–6(b)(3) applies to the pass-through partner by substituting "pass-through partner" for "partnership" where § 301.6241–6(b)(3) refers to the partnership that pays the imputed underpayment.

(5) *Treatment of pass-through partners that are not partnerships*–(i) *S corporations*. For purposes of this paragraph (e), an S corporation is treated as a partnership and its shareholders are treated as partners.

(ii) *Trusts and estates*. Except as provided in paragraph (g) of this section, for purposes of paragraph (e) of this section, a trust and its beneficiaries, and an estate and its beneficiaries are treated in the same manner as a partnership and its partners.

(6) *Pass-through partners subject to chapter 1 tax*. A pass-through partner that is subject to tax under chapter 1 of the Code on the adjustments (or a portion of the adjustments) reflected on the statement furnished to such partner under § 301.6226–2 (or paragraph (e)(3) of this section) takes the adjustments into account under this paragraph (e)(6) when the pass-through partner calculates and pays the additional reporting year tax as determined under paragraph (b) of this section and furnishes statements to its partners in accordance with paragraph (e)(3) of this section. Notwithstanding the prior sentence, a pass-through partner is only required to include on a statement under paragraph (e)(3) of this section the adjustments that would be required to be included on statements furnished to owners or beneficiaries under sections 6037 and 6034A, as applicable, if the pass-through partner had correctly reported the items for the year to which the adjustments relate. If the pass-through partner fails to comply with the requirements of this paragraph (e)(6), the pass-through

partner must compute and pay an imputed underpayment, as well as any penalties, additions to tax, additional amounts, and interest with respect to the adjustments reflected on the statement furnished to such partner in accordance with paragraph (e)(4) of this section.

(f) *Partners subject to withholding under chapters 3 and 4*. A reviewed year partner that is subject to withholding under § 301.6241–6(b)(4) must file an income tax return for the reporting year to report its additional reporting year tax and its share of any penalties, additions to tax, additional amounts, and interest (notwithstanding any filing exception in § 1.6012–1(b)(2)(i) or § 1.6012–2(g)(2)(i) of this chapter). The amount of tax paid by a partnership under § 301.6241–6(b)(4) is allowed as a credit under section 33 to the reviewed year partner to the extent that the tax is allocable to the reviewed year partner (within the meaning of § 1.1446–3(d)(2) of this chapter) or is actually withheld from the reviewed year partner (within the meaning of § 1.1464–1(a) or § 1.1474–3 of this chapter). The credit is allowed against the reviewed year partner's income tax liability for its reporting year. The reviewed year partner must substantiate the credit by attaching the applicable Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, or Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, to its income tax return for the reporting year, as well as satisfying any other requirements prescribed by the IRS in forms and instructions.

(g) *Treatment of disregarded entities and wholly-owned grantor trusts*. In the case of a reviewed year partner that is a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes in the reviewed year or a trust that is wholly owned by only one person in the reviewed year, whether the grantor or another person, and where the trust reports the owner's information to payors under § 1.671–4(b)(2)(i)(A) of this chapter and that is furnished a statement described in § 301.6226–2 (or paragraph (e)(3) of this section), the owner of the disregarded entity or wholly-owned grantor trust must take into account the adjustments reflected on that statement in accordance with this section as if the owner were the reviewed year partner.

(h) *Examples*. The following examples illustrate the rules of this section. For purposes of these examples, unless otherwise stated, each partnership is subject to subchapter C of chapter 63 of the Code, each partnership and partner has a calendar year taxable year, no modifications are requested by any partnership under § 301.6225–2, no penalties, additions to tax, or additional amounts are determined at the partnership level, all persons are U.S. persons, the highest rate of income tax in effect for is 40 percent for all relevant periods, the highest rate of income tax in effect for corporations is 20 percent for all relevant periods, and the highest rate of tax for individuals for capital gains is 15 percent for all relevant periods.

(1) *Example 1*. On its partnership return for the 2020 tax year, Partnership reported ordinary income of $1,000 and charitable contributions of $400. On June 1, 2023, the IRS mails a notice of final partnership adjustment (FPA) to Partnership for Partnership's 2020 year disallowing the charitable contribution in its entirety and determining that a 20 percent accuracy-related penalty under section 6662(b) applies to the disallowance of the charitable contribution, and setting forth a single imputed underpayment with respect to such adjustments. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and files a timely petition in the Tax Court challenging the partnership adjustments. The Tax Court determines that Partnership is not entitled to any of the claimed $400 in charitable contributions and upholds the applicability of the penalty. The decision regarding Partnership's 2020 tax year becomes final on December 15, 2025. Pursuant to § 301.6226–2(b), the partnership adjustments are finally determined on December 15, 2025. On February 2, 2026, Partnership files the statements described under § 301.6226–2 with the IRS and furnishes to partner A, an individual who was a partner in Partnership during 2020, a statement described in § 301.6226–2. A had a 25 percent interest in Partnership during all of 2020 and was allocated 25 percent of all items from Partnership for that year. The statement shows A's share of ordinary income reported on Partnership's return for the reviewed year of $250 and A's share of the charitable contribution reported on Partnership's return for the reviewed year of $100. The statement also shows an adjustment to A's share of the charitable contribution, a reduction of $100 resulting in $0 charitable contribution allocated to A from Partnership for 2020. In addition, the statement reports that a 20 percent accuracy-related penalty under section 6662(b) applies. A must pay the additional reporting year tax as determined in accordance with paragraph (b) of this section, in addition to A's penalties and interest. A computes his additional reporting year tax as follows. First, A determines the correction amount for the first affected year (the 2020 taxable year) by taking into account A's share of the partnership adjustment (-$100 reduction in charitable contribution) for the 2020 taxable year. A determines the amount by which his chapter 1 tax for 2020 would have increased or decreased if the $100 adjustment to the charitable contribution from Partnership were taken into account for that year. There is no adjustment to tax attributes in A's intervening years as a result of the adjustment to the charitable contribution for 2020. Therefore, A's aggregate of the correction amounts is the correction amount for 2020, A's first affected year. In addition to the aggregate of the correction amounts being added to the chapter 1 tax that A owes for 2026, the reporting year, A must calculate a 20 percent accuracy-related penalty on A's underpayment attributable to the $100 adjustment to the charitable contribution, as well as interest on the correction amount for the first affected year and the penalty determined in accordance with paragraph (c) of this section. Interest on the correction amount for the first affected tax year runs from April 15, 2021, the due date of A's 2020 return (the first affected tax year) until A pays this amount. In addition, interest runs on the penalty from April 15, 2021, the due date of A's 2020 return for the first affected year until A pays this amount. On his 2026 income tax return, A must report the additional reporting year tax determined in accordance with paragraph (b) of this section, which is the correction amount for 2020, plus the accuracy-related penalty determined in accordance with paragraph (d) of this section, and interest determined in accordance with paragraph (c) of this section on the correction amount for 2020 and the penalty.

(2) *Example 2*. On its partnership return for the 2020 tax year, Partnership reported an ordinary loss of $500. On June 1, 2023, the IRS mails an FPA to Partnership for the 2020 taxable year determining that $300 of the $500 in ordinary loss should be recharacterized as a long-term capital loss. Partnership has no long-term capital gain for its 2020 tax year. The FPA for Partnership's 2020 tax year reflects an adjustment of an increase in ordinary income of $300 (as a result of the disallowance of the recharacterization of $300 from ordinary loss to long-term capital loss) and an imputed underpayment related to that adjustment, as well as an adjustment of an additional $300 in long-term capital loss for 2020 which does not result in an imputed underpayment under § 301.6225–1(f). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA and does not file a petition for readjustment under section 6234. Accordingly, under § 301.6226–1(b)(2) and § 301.6225–3(b)(6), the adjustment year partners (as defined in § 301.6241–1(a)(2)) do not take into account the $300 long-term capital loss that does not result in an imputed underpayment. Rather, the $300 long-term capital loss is taken into account by the reviewed year partners. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On September 30, 2023, Partnership files with the IRS statements described in § 301.6226–2 and furnishes statements to all of its

reviewed year partners in accordance with § 301.6226–2. One partner of Partnership in 2020, B (an individual), had a 25 percent interest in Partnership during all of 2020 and was allocated 25 percent of all items from Partnership for that year. The statement filed with the IRS and furnished to B shows B's allocable share of the ordinary loss reported on Partnership's return for the 2020 taxable year as $125. The statement also shows an adjustment to B's allocable share of the ordinary loss in the amount of -$75, resulting in a corrected ordinary loss allocated to B of $50 for taxable year 2020 ($125 originally allocated to B less $75 which is B's share of the adjustment to the ordinary loss). In addition, the statement shows an increase to B's share of long-term capital loss in the amount of $75 (B's share of the adjustment that did not result in the imputed underpayment with respect to Partnership). B must pay the additional reporting year tax as determined in accordance with paragraph (b) of this section. B computes his additional reporting year tax as follows. First, B determines the correction amount for the first affected year (the 2020 taxable year) by taking into account B's share of the partnership adjustments (a $75 reduction in ordinary loss and an increase of $75 in long-term capital loss) for the 2020 taxable year. B determines the amount by which his chapter 1 tax for 2020 would have increased or decreased if the $75 adjustment to ordinary loss and the $75 adjustment to long-term capital loss from Partnership were taken into account for that year. Second, B determines if there is any increase or decrease in chapter 1 tax for any intervening year as a result of the adjustment to the ordinary and capital losses for 2020. B's aggregate of the correction amounts is the correction amount for 2020, B's first affected year plus any correction amounts for any intervening years. B is also liable for any interest on the correction amount for the first affected year and for any intervening year as determined in accordance with paragraph (c) of this section.

(3) *Example 3*. On its partnership return for the 2020 tax year, Partnership, a domestic partnership, reported U.S. source dividend income of $2,000. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year increasing the amount of U.S. source dividend income to $4,000 and determining that a 20 percent accuracy-related penalty under section 6662(b) applies to the increase in U.S. source dividend income. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On September 30, 2023, Partnership files the statements described under § 301.6226–2 with the IRS and furnishes to partner C, a nonresident alien individual who was a partner in Partnership during 2020 (and remains a partner in Partnership in 2023), a statement described in § 301.6226–2. C had a 50 percent interest in Partnership during all of 2020 and was allocated 50 percent of all items from Partnership for that year. The statement shows C's share of U.S. source dividend income reported on Partnership's return for the reviewed year of $1,000 and an adjustment to U.S. source dividend income of $1,000. In addition, the statement reports that a 20 percent accuracy-related penalty under section 6662(b) applies. Under § 301.6241–6(b)(4)(i), because the additional $1,000 in U.S. source dividend income allocated to C is an amount subject to withholding (as defined in § 301.6241–6(b)(2)), Partnership must pay the amount of tax required to be withheld on the adjustment. See §§ 1.1441–1(b)(1) and 1.1441–5(b)(2)(i)(A) of this chapter. Under § 301.6241–6(b)(4)(ii), Partnership may reduce the amount of withholding tax it must pay because it has valid documentation from 2020 that establishes that C was entitled to a reduced rate of withholding in 2020 on U.S. source dividend income of 10 percent pursuant to a treaty. Partnership withholds $100 of tax from C's distributive share, remits the tax to the IRS, and files the necessary return and information returns required by § 1.1461–1 of this chapter. On his 2023 return, C must report the additional reporting year tax determined in accordance with paragraph (b) of this section, the accuracy-related penalty determined in accordance with paragraph (d) of this section, and interest determined in accordance with paragraph (c) of this section on the correction amount for the first affected year, the correction amount for any intervening year, and the penalty. Under paragraph (f) of this section, C may claim the $100 withholding tax paid by Partnership pursuant to § 301.6241–6(b)(4)(i) as a credit under section 33 against C's income tax liability on his 2023 return.

(4) *Example 4*. On its partnership return for the 2020 tax year, Partnership reported ordinary income of $100 and a long-term capital gain of $40. Partnership had four equal partners during the 2020 tax year: E, F, G, and H, all of whom were individuals. On its partnership return for the 2020 tax year, the entire long-term capital gain was allocated to partner E and the ordinary income was allocated to all partners based on their equal (25 percent) interest in Partnership. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year and determines that the long-term capital gain should have been allocated equally to all four partners and that Partnership should have recognized an additional $10 in ordinary income. On June 1, 2023, the IRS mails an FPA to Partnership reflecting the reallocation of the $40 long-term capital gain so that F, G, and H each have $10 increase in long-term capital gain and E has a $30 reduction in long-term capital gain for 2020. In addition, the FPA reflects the partnership adjustment increasing ordinary income by $10. The FPA reflects a general imputed underpayment with respect to the increase in ordinary income and a specific imputed underpayment with respect to the increase in long-term capital gain allocated to F, G, and H. In addition, the FPA reflects a $30 partnership adjustment that does not result in an imputed underpayment, that is, the reduction of $30 in long-term capital gain with respect to E that is associated with the specific imputed underpayment in accordance with § 301.6225–1(g)(2)(iii)(B). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the specific imputed underpayment relating to the reallocation of long-term capital gain. Partnership does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. Partnership timely pays the general imputed underpayment that resulted from the partnership adjustment to ordinary income. On September 30, 2023, Partnership files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA that relate to the specific imputed underpayment, that is, the reallocation of long-term capital gain. The statements for F, G, and H each reflect a partnership adjustment of an additional $10 of long-term capital gain for 2020. The statement for E reflects a partnership adjustment of a reduction of $30 of long-term capital gain for 2020. Because E, F, G, and H are all individuals, all partners must report the additional reporting year tax as determined in accordance with paragraph (b) of this section in the partners' reporting year, which is 2023. They compute their additional reporting year tax as follows. First, they determine the correction amount for the first affected year (the 2020 taxable year) by taking into account their share of the partnership adjustments for the 2020 taxable year. They each determine the amount by which their chapter 1 tax for 2020 would have increased or decreased if the adjustment to long-term capital gain from Partnership were taken into account for that year. Second, they determine if there is any increase or decrease in chapter 1 tax for any intervening year as a result of the adjustment to the long-term capital gain for 2020. Their aggregate of the correction amounts is the sum of the correction amount for 2020, their first affected year and any correction amounts for any intervening years. They are also liable for any interest on the correction amount for the first affected year and for any intervening year as determined in accordance with paragraph (c) of this section.

(5) *Example 5*. On its partnership return for the 2020 taxable year, Partnership reported a long-term capital loss of $500. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS mails a notice of proposed partnership adjustment (NOPPA) in which it proposes to disallow $200 of the reported $500 long-term capital loss, the only adjustment. Accordingly, the imputed underpayment reflected in the NOPPA is $80 ($200 x 40 percent). F, a C corporation partner with a 50 percent interest in Partnership, received 50 percent of all long-term capital losses for 2020. As part of the modification process described in § 301.6225–2(d)(2), F files an amended return for 2020 taking into account F's share of the partnership adjustment ($100 reduction in long-term capital loss) and pays the tax owed for 2020, including interest. Also as part of the modification process, F also files amended returns for 2021 and 2022 and pays additional tax (and interest) for these years because the reduction in long-term capital loss for 2020 affected the tax due from F for 2021 and 2022. See § 301.6225–2(d)(2). The reduction of the long-term capital loss in 2020 did not affect any other taxable year of F. This is the only modification requested. The IRS approves the modification with respect to F and on June 1, 2023, mails an FPA to Partnership for Partnership's 2020

year reflecting the partnership adjustment reducing the long-term capital loss in the amount of $200. The FPA also reflects the modification to the imputed underpayment based on the amended returns filed by F taking into account F's share of the reduction in the long-term capital loss. Therefore, the imputed underpayment in the FPA is $40 ($100 x 40 percent). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and files a timely petition in the Tax Court challenging the partnership adjustments. The Tax Court upholds the determinations in the FPA and the decision regarding Partnership's 2020 tax year becomes final on December 15, 2025. Pursuant to § 301.6226–2(b), the partnership adjustments are finally determined on December 15, 2025. On February 1, 2026, Partnership files the statements described under § 301.6226–2 with the IRS and furnishes to its partners statements reflecting their shares of the partnership adjustment. The statement issued to F reflects F's share of the partnership adjustment for Partnership's 2020 taxable year as finally determined by the Tax Court. The statement shows F's share of the long-term capital loss adjustment for the reviewed year of $100, as well as the $100 long-term capital loss taken into account by F as part of the amended return modification. Accordingly, in accordance with paragraph (b) of this section, when F computes its correction amounts for the first affected year (the 2020 taxable year) and the intervening years (the 2021 through 2026 taxable years), F computes any increase or decrease in chapter 1 tax for those years using the returns for the 2020, 2021, and 2022 taxable years as amended during the modification process and taking into account any chapter 1 tax paid with those amended returns. F also takes into account the interest paid with F's amended returns when determining the interest under paragraph (c) of this section that must be paid in the reporting year.

(6) *Example 6*. Partnership has two equal partners for the 2020 tax year: M (an individual) and J (a partnership). For the 2020 tax year, J has two equal partners – K and L – both individuals. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year increasing Partnership's ordinary income by $500,000 and asserting an imputed underpayment of $200,000. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. Therefore, Partnership's adjustment year is 2023, the due date of the adjustment year return is March 15, 2024 and the extended due date for the adjustment year return is September 16, 2024. On October 12, 2023, Partnership timely files with the IRS statements described in § 301.6226–2 and timely furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to M and J each reflect a partnership adjustment of $250,000 of ordinary income. M takes her share of the adjustments reflected on the statements furnished by Partnership into account on M's return for the 2023 tax year in accordance with paragraph (b) of this section. On April 1, 2024, J files the adjustment tracking report and files and furnishes statements to K and L reflecting each partner's share of the adjustments reflected on the statements Partnership furnished to J. K and L must take their share of adjustments reflected on the statements furnished by J into account on their returns for the 2023 tax year in accordance with paragraph (b) of this section by treating themselves as reviewed year partners for purposes of paragraph (b).

(7) *Example 7*. On its partnership return for the 2020 tax year, Partnership reported that it placed Asset, which had a depreciable basis of $210,000, into service in 2020 and depreciated Asset over 5 years, using the straight-line method. Accordingly, Partnership claimed depreciation of $42,000 in each year related to Asset. Partnership has two equal partners for the 2020 tax year: M (a partnership) and N (an S corporation). For the 2020 tax year, N has one shareholder, O, who is an individual. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year. In the FPA, the IRS determines that Asset should have been depreciated over 7 years instead of 5 years and adjusts the depreciation for the 2020 tax year to $30,000 instead of $42,000 resulting in a $12,000 adjustment. This adjustment results in an imputed underpayment of $4,800 ($12,000 x 40 percent). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On October 12, 2023, Partnership timely files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to M and N reflect a partnership adjustment of $6,000 of ordinary income for the 2020 tax year. On February 1, 2024, N takes the adjustments into account under paragraph (e)(3) of this section by filing a partnership adjustment tracking report and furnishing a statement to O reflecting her share of the adjustments reported to N on the statement it received from Partnership. M does not furnish statements and instead chooses to calculate and pay an imputed underpayment under paragraph (e)(4) of this section equal to $1,200 ($6,000 x 40 percent) on the adjustments reflected on the statement it received from Partnership plus interest on the amount calculated in accordance with paragraph (e)(4)(iv)(B) of this section. On her 2023 return, O properly takes the adjustments into account under this section. Therefore, O reports and pays the additional reporting year tax determined in accordance with paragraph (b) of this section, which is the correction amount for 2020 plus any correction amounts for 2021 and 2022 (if the adjustments in 2020 resulted in any changes to the tax attributes of O in those years), and pays interest determined in accordance with paragraph (c) of this section on the correction amounts for each of those years.

(8) *Example 8*. On its partnership return for the 2020 tax year, Partnership reported $1,000 of ordinary loss. Partnership has two equal partners for the 2020 tax year: P and Q, both S corporations. For the 2020 tax year, P had one shareholder, R, an individual. For the 2020 tax year, Q had two shareholders, S and T, both individuals. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year determining $500 of the $1,000 of ordinary loss should be recharacterized as $500 of long-term capital loss and $500 of the ordinary loss should be disallowed. The FPA asserts an imputed underpayment of $400 ($1,000 x 40 percent) with respect to the $1,000 reduction to ordinary loss and reflecting an adjustment that does not result in an imputed underpayment of a $500 capital loss. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On October 12, 2023, Partnership timely files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to P and Q each reflect a partnership adjustment of $500 increase in ordinary income and a $250 increase in capital loss in accordance with § 301.6225–3(b)(6). P takes the adjustments into account under paragraph (e)(3) of this section by timely filing a partnership adjustment tracking report and furnishing a statement to R. Q timely filed a partnership adjustment tracking report, but chooses not to furnish statements and instead must calculate and pay an imputed underpayment under paragraph (e)(4) of this section as well as interest on the imputed underpayment determined under paragraph (e)(4)(iv)(B) of this section. After applying the rules set forth in § 301.6225–1, Q calculates the imputed underpayment that it is required to pay of $200 ($500 adjustment to ordinary income x 40 percent). Q also has one adjustment that does not result in an imputed underpayment – the $250 increase to capital loss. Pursuant to paragraph (e)(1) of this section, Q files the partnership adjustment tracking report and pay the amounts due under paragraph (e)(4) of this section by September 15, 2024, the extended due date of Partnership's return for the adjustment year, 2023. Pursuant to paragraph (e)(4)(v) of this section, on its 2024 return, the year in which Q made its payment of the imputed underpayment, Q reports and allocates the $250 capital loss to its shareholders for its 2024 taxable year as a capital loss as provided in § 301.6225–3.

(9) *Example 9*. On its partnership return for the 2020 tax year, Partnership reported a $1,000 long-term capital gain on the sale of Stock. Partnership has two equal partners for the 2020 tax year: U (an individual) and V (a partnership). For the 2020 tax year, V has two equal partners: W (an individual) and X (a partnership). For the 2020 tax year, X has two equal partners: Y and Z, both of which are C corporations. On June 1, 2023, the IRS mails a

NOPPA to Partnership for Partnership's 2020 year proposing a $500 increase in the long-term capital gain from the sale of Stock and an imputed underpayment of $200 ($500 x 40 percent). On July 17, 2023, Partnership timely submits a request to modify the rate used in calculating the imputed underpayment under § 301.6225–2(d)(4). Partnership submits sufficient information demonstrating that $375 of the $500 adjustment is allocable to individuals (50 percent of the $500 adjustment allocable to U and 25 percent of the $500 adjustment allocable to W) and the remaining $125 is allocable to C corporations (the indirect partners Y and Z). The IRS approves the modification and the imputed underpayment is reduced to $81.25 (($375 x 15 percent) + ($125 x 20 percent)). See § 301.6225–2(b)(3). No other modifications are requested. On February 28, 2024, the IRS mails an FPA to Partnership for Partnership's 2020 year determining a $500 increase in the long-term capital gain on the sale of Stock and asserting an imputed underpayment of $81.25 after taking into account the approved modifications. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on May 28, 2024. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on May 29, 2024. On July 26, 2024, Partnership timely files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to U and V each reflect a partnership adjustment of a $250 increase in long-term capital gain. V timely files the adjustment tracking report but fails to furnish statements and therefore must calculate and pay an imputed underpayment under paragraph (e)(4) of this section as well as interest on the imputed underpayment determined under paragraph (e)(4)(iv)(B) of this section. On February 3, 2025, V pays an imputed underpayment of $43.75 (($125 x 20 percent for the adjustments allocable to X) + ($125 x 15 percent for the adjustments allocable to W)) which takes into account the rate modifications approved by the IRS with respect to Y and Z. V must also pay any interest on the amount as determined in accordance with paragraph (e)(4)(iv)(B) of this section. V must file the adjustment tracking report and pay the amounts due under paragraph (e)(4) of this section no later than September 15, 2025, the extended due date of Partnership's return for the 2024 year, which is the adjustment year.

(i) *Applicability date*–(1) *In general*. Except as provided in paragraph (i)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 10. Section 301.6227–1 is added to read as follows:

§ 301.6227–1 Administrative adjustment request by partnership.

(a) *In general*. A partnership may file a request for an administrative adjustment with respect to any partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) for any partnership taxable year. When filing an administrative adjustment request (AAR), the partnership must determine whether the adjustments requested in the AAR result in an imputed underpayment in accordance with § 301.6227–2(a) for the reviewed year (as defined in § 301.6241–1(a)(8)). If the adjustments requested in the AAR result in an imputed underpayment, the partnership must take the adjustments into account under the rules described in § 301.6227–2(b) unless the partnership makes an election under § 301.6227–2(c), in which case each reviewed year partner (as defined in § 301.6241–1(a)(9)) must take the adjustments into account in accordance with § 301.6227–3. If the adjustments requested in the AAR are adjustments described in § 301.6225–1(f)(1) that do not result in an imputed underpayment (as determined under § 301.6227–2(a)), such adjustments must be taken into account by the reviewed year partners in accordance with § 301.6227–3. A partner may not make a request for an administrative adjustment of a partnership-related item except in accordance with § 301.6222–1 or if the partner is doing so on behalf of the partnership in the partner's capacity as the partnership representative designated under section 6223. In addition, a partnership may not file an AAR solely for the purpose of changing the designation of a partnership representative or changing the appointment of a designated individual. See § 301.6223–1 (regarding designation of the partnership representative). When the partnership changes the designation of the partnership representative (or appointment of the designated individual) in conjunction with the filing of an AAR in accordance with § 301.6223–1(e), the change in designation (or appointment) is treated as occurring prior to the filing of the AAR. For rules regarding a notice of change to the amount of creditable foreign tax expenditures see paragraph (g) of this section.

(b) *Time for filing an AAR*. An AAR may only be filed by a partnership with respect to a partnership taxable year after a partnership return for that taxable year has been filed with the Internal Revenue Service (IRS). A partnership may not file an AAR with respect to a partnership taxable year more than three years after the later of the date the partnership return for such partnership taxable year was filed or the last day for filing such partnership return (determined without regard to extensions). Except as provided in § 301.6231–1(f), an AAR (including a request filed by a partner in accordance with § 301.6222–1) may not be filed for a partnership taxable year after a notice of administrative proceeding with respect to such taxable year has been mailed by the IRS under section 6231.

(c) *Form and manner for filing an AAR*–(1) *In general*. An AAR by a partnership, including any required statements, forms, and schedules as described in this section, must be filed with the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS, and must be signed under penalties of perjury by the partnership representative (as described in §§ 301.6223–1 and 301.6223–2).

(2) *Contents of AAR filed with the IRS*. A partnership must include the information described in this paragraph (c)(2) when filing an AAR with the IRS. In the case of a failure by the partnership to provide the information described in this paragraph (c)(2), the IRS may, but is not required to, invalidate an AAR or readjust any items that were adjusted on the AAR. An AAR filed with the IRS must include–

(i) The adjustments requested;

(ii) If a reviewed year partner is required to take into account the adjustments requested under § 301.6227–3, statements described in paragraph (e) of this section, including any transmittal with respect to such statements required by forms, instructions, and other guidance prescribed by the IRS; and

(iii) Other information prescribed by the IRS in forms, instructions, or other guidance.

(d) *Copy of statement furnished to reviewed year partners in certain cases*. If a reviewed year partner is required to take into account adjustments requested in an AAR under § 301.6227–3, the partnership must furnish a copy of the statement described in paragraph (e) of this section to the reviewed year partner to whom the statement relates in accordance with the forms, instructions and other guidance prescribed by the IRS. If the partnership mails the statement, it must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. The statement must be furnished to the reviewed year partner on the date the AAR is filed with the IRS.

(e) *Statements*–(1) *Contents*. Each statement described in this paragraph (e) must include the following correct information:

(i) The name and TIN of the reviewed year partner to whom the statement is being furnished;

(ii) The current or last address of the partner that is known to the partnership;

(iii) The reviewed year partner's share of items as originally reported on statements furnished to the partner under section 6031(b) and, if applicable, section 6227;

(iv) The reviewed year partner's share of the adjustments as described under paragraph (e)(2) of this section;

(v) The date the statement is furnished to the partner;

(vi) The partnership taxable year to which the adjustments relate; and

(vii) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(2) *Determination of each partner's share of adjustments*–(i) *In general*. Except as provided in paragraphs (e)(2)(ii) and (iii) of this section, each reviewed year partner's share of the adjustments requested in the AAR is determined in the same manner as each adjusted partnership-related item was originally allocated to the reviewed year partner on the partnership return for the reviewed year. If the partnership pays an imputed underpayment under § 301.6227–2(b) with respect to the adjustments requested in the AAR, the reviewed year partner's share of the adjustments requested in the AAR only includes any adjustments that did not result in the imputed underpayment, as determined under § 301.6227–2(a).

(ii) *Adjusted partnership-related item not reported on the partnership's return for the reviewed year*. Except as provided in paragraph (e)(2)(iii) of this section, if the adjusted partnership-related item was not reported on the partnership return for the reviewed year, each reviewed year partner's share of the adjustments must be determined in accordance with how such items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement.

(iii) *Allocation adjustments*. If an adjustment involves allocation of a partnership-related item to a specific partner or in a specific manner, including a reallocation of an item, the reviewed year partner's share of the adjustment requested in the AAR is determined in accordance with the AAR.

(f) *Administrative proceeding for a taxable year for which an AAR is filed*. Within the period described in section 6235, the IRS may initiate an administrative proceeding with respect to the partnership for any partnership taxable year regardless of whether the partnership filed an AAR with respect to such taxable year and may adjust any partnership-related item, including any partnership-related item adjusted in an AAR filed by the partnership. The amount of an imputed underpayment determined by the partnership under § 301.6227–2(a)(1), including any modifications determined by the partnership under § 301.6227–2(a)(2), may be re-determined by the IRS.

(g) [Reserved]

(h) *Applicability date*–(1) *In general*. Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 11. Section 301.6227–2 is added to read as follows:

§ 301.6227–2 Determining and accounting for adjustments requested in an administrative adjustment request by the partnership.

(a) *Determining whether adjustments result in an imputed underpayment*–(1) *Determination of an imputed underpayment*. The determination of whether adjustments requested in an administrative adjustment request (AAR) result in an imputed underpayment in the reviewed year (as defined in § 301.6241–1(a)(8)) and the determination of the amount of any imputed underpayment is made in accordance with the rules under § 301.6225–1.

(2) *Modification of imputed underpayment for purposes of this section*. A partnership may apply modifications to the amount of an imputed underpayment determined under paragraph (a)(1) of this section using only the provisions under § 301.6225–2(d)(3) (regarding tax-exempt partners), § 301.6225–2(d)(4) (regarding modification of applicable tax rate), § 301.6225–2(d)(5) (regarding specified passive activity losses), § 301.6225–2(d)(6)(ii) (regarding limitations or restrictions in the grouping of adjustments), § 301.6225–2(d)(7) (regarding certain qualified investment entities), § 301.6225–2(d)(9) (regarding tax treaty modifications), or as provided in forms, instructions, or other guidance prescribed by the IRS with respect to AARs. The partnership may not modify an imputed underpayment resulting from adjustments requested in an AAR except as described in this paragraph (a)(2). When applying modifications to the amount of an imputed underpayment under this paragraph (a)(2):

(i) The partnership is not required to seek the approval from the Internal Revenue Service (IRS) prior to applying modifications to the amount of any imputed underpayment under paragraph (a)(1) of this section reported on the AAR; and

(ii) As part of the AAR filed with the IRS in accordance with forms, instructions, and other guidance prescribed by the IRS, the partnership must –

(A) Notify the IRS of any modification;

(B) Describe the effect of the modification on the imputed underpayment;

(C) Provide an explanation of the basis for such modification; and

(D) Provide documentation to support the partnership's eligibility for the modification.

(b) *Adjustments resulting in an imputed underpayment taken into account by the partnership*–(1) *In general*. Except in the case of a valid election under paragraph (c) of this section, a partnership must pay any imputed underpayment (as determined under paragraph (a) of this section) resulting from the adjustments requested in an AAR on the date the partnership files the AAR. For the rules applicable to the partnership's expenditure for an imputed underpayment, as well as any penalties and interest paid by the partnership with respect to an imputed underpayment, see § 301.6241–4.

(2) *Penalties and interest*. The IRS may impose a penalty, addition to tax, and additional amount with respect to any imputed underpayment determined under this section in accordance with section 6233(a)(3) (penalties determined from the reviewed year). In addition, the IRS may impose a penalty, addition to tax, and additional amount with respect to a failure to pay any imputed underpayment on the date an AAR is filed in accordance with section 6233(b)(3) (penalties with respect to the adjustment year return). Interest on an imputed underpayment is determined under chapter 67 of the Internal Revenue Code for the period beginning on the date after the due date of the partnership return for the reviewed year (as defined in § 301.6241–1(a)(8)) (determined without regard to extension) and ending on the date the AAR is filed. See § 301.6233(a)–1(b). In the case of any failure to pay an imputed underpayment on the date the AAR is filed, interest is determined in accordance with section 6233(b)(2) and § 301.6233(b)–1(c).

(3) *Coordination with chapters 3 and 4 of the Internal Revenue Code*–(i) *Coordination when partnership pays an imputed underpayment*. If a partnership pays an imputed underpayment resulting from adjustments requested in an AAR under paragraph (b)(1) of this section, the rules in § 301.6241–6(b)(3) apply to treat the partnership as having paid the amount required to be withheld under chapter 3 or chapter 4 (as defined in § 301.6241–6(b)(2)).

(ii) *Coordination when partnership elects to have adjustments taken into account by reviewed year partners*. If a partnership elects under paragraph (c) of this section to have its reviewed year partners take into account adjustments requested in an AAR, the rules in § 301.6226–2(g)(3) apply to the partnership, and the rules in § 301.6226–3(f) apply to the reviewed year partners that take into account the adjustments pursuant to § 301.6227–3.

(c) *Election to have adjustments resulting in an imputed underpayment taken into account by reviewed year partners*. In lieu of paying an imputed underpayment under paragraph (b) of this section, the partnership may elect to have each reviewed year partner (as defined in § 301.6241–1(a)(9)) take into account the adjustments requested in the AAR that are associated with such imputed underpayment in accordance with § 301.6227–3. A partnership makes an election under this paragraph (c) at the time the AAR is filed in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership makes a valid election in accordance with this paragraph (c), the partnership is not liable for, nor required to pay, the imputed underpayment to which the election relates. Rather, each reviewed year partner must take into account their share of the adjustments requested in the AAR that are associated with such imputed underpayment in accordance with § 301.6227–3. If an election is made under this paragraph (c) with respect to an imputed underpayment, modifications applied under paragraph (a)(2) of this section to such imputed underpayment are disregarded and all adjustments requested in the AAR that are associated with such imputed underpayment must be taken into account by each reviewed year partner in accordance with § 301.6227–3.

(d) *Adjustments not resulting in an imputed underpayment*. If any adjustments requested in an AAR are adjustments that do not result in an imputed underpayment (as determined under paragraph (a) of this section), the partnership must furnish statements to each reviewed year partner and file such statements with the IRS in accordance with § 301.6227–1. Each reviewed year partner must take into account its share of the adjustments that do not result in an imputed underpayment requested in the AAR in accordance with § 301.6227–3.

(e) *Applicability date*–(1) *In general*. Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 12. Section 301.6227–3 is added to read as follows:

§ 301.6227–3 Adjustments requested in an administrative adjustment request taken into account by reviewed year partners.

(a) *In general*. Each reviewed year partner (as defined in § 301.6241–1(a)(9)) is required to take into account its share of adjustments requested in an administrative adjustment request (AAR) that either do not result in an imputed underpayment (as described in § 301.6225–1(f)(1)) or are associated with an imputed underpayment for which the partnership makes an election under § 301.6227–2(c). Each reviewed year partner receiving a statement furnished in accordance with § 301.6227–1(d) must take into account adjustments reflected in the statement in the reviewed year partner's taxable year that includes the date the statement is furnished (reporting year) in accordance with paragraph (b) of this section.

(b) *Adjustments taken into account by the reviewed year partner in the reporting year*–(1) *In general*. Except as provided in paragraph (c) of this section, a reviewed year partner that is furnished a statement described in paragraph (a) of this section must treat the statement as if it were issued under section 6226(a)(2) and, on or before the due date for the reporting year must report and pay the additional reporting year tax (as defined in § 301.6226–3(a)), if any, determined after taking into account that partner's share of the adjustments requested in the AAR in accordance with § 301.6226–3. A reviewed year partner may, in accordance with § 301.6226–3(a), reduce chapter 1 tax for the reporting year where the additional reporting year tax is less than zero. For purposes of paragraph (b) of this section, the rule under § 301.6226–3(c)(3) (regarding the increased rate of interest) does not apply. Nothing in this section entitles any partner to a refund of tax imposed by chapter 1 of the Internal Revenue Code (chapter 1 tax) to which such partner is not entitled. For instance, a partnership-partner (as defined in § 301.6241–1(a)(7)) may not claim a refund with respect to its share of any adjustment.

(2) *Examples*. The following examples illustrate the rules of paragraph (b) of this section.

(i) *Example 1*. In 2022, partner A, an individual, received a statement described in paragraph (a) of this section from Partnership with respect to Partnership's 2020 taxable year. Both A and Partnership are calendar year taxpayers and A is not claiming any refundable tax credit in 2020. The only adjustment shown on the statement is an increase in ordinary loss. Taking into account the adjustment, A determines that his additional reporting year tax for 2022 (the reporting year) is -$100 (that is, a reduction of $100.) A's chapter 1 tax for 2022 (without regard to any additional reporting year tax) is $150. Applying the rules in paragraph (b)(1) of this section, 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).

(ii) *Example 2*. The facts are the same as in *Example 1* in paragraph (b)(2)(i) of this section, except A's chapter 1 tax for 2022 (without regard to any additional reporting year tax) is $75. Applying the rules in paragraph (b)(1) of this section, A's chapter 1 tax for 2022 is reduced by the -$100 of additional reporting year tax. Accordingly, A's chapter 1 tax for 2022 is -$25 ($75 chapter 1 tax without regard to any additional reporting year tax plus -$100 of additional reporting year tax), A owes no chapter 1 tax for 2022, and A may make a claim for refund with respect to any overpayment.

(c) *Reviewed year partners that are pass-through partners*–(1) *In general*. Except as provided in paragraph (c) of this section, if a statement described in paragraph (a) of this section (including a statement described in this paragraph (c)(1)) is furnished to a reviewed year partner that is a pass-through partner (as defined in § 301.6241–1(a)(5)), the pass-through partner must take into account the adjustments reflected on that statement in accordance with § 301.6226–3(e) by treating the partnership that filed the AAR as the partnership that made an election under § 301.6226–1. A pass-through partner that furnishes statements in accordance with § 301.6226–3(e)(3) must provide the information described in paragraph (c)(3) of this section in lieu of the information described in § 301.6226–3(e)(3)(iii) on the statements the pass-through partner furnishes to its partners. A pass-through partner that computes and pays an imputed underpayment in accordance with § 301.6226–3(e)(4)(iii) may not apply any modifications to the amount of imputed underpayment. For purposes of this paragraph (c)(1), the statement furnished to the pass-through partner by the partnership filing the AAR is treated as if it were a statement issued under section 6226(a)(2) and described in § 301.6226–2.

(2) *Adjustments that do not result in an imputed underpayment*. If adjustments on a statement received by the pass-through partner under paragraph (a) or (c)(1) of this section do not result in an imputed underpayment for the pass-through partner (as described in § 301.6225–1(f)(1)), the pass-through partner must take the adjustments that do not result in an imputed underpayment into account in accordance with § 301.6226–3(e)(3). The pass-through partner must take such adjustments into account under this paragraph (c)(2) even in situations where the pass-through partner pays an imputed underpayment in accordance with § 301.6226–3(e)(4)(iii). The pass-through partner must provide the information described in paragraph (c)(3) of this section in lieu of the information described in § 301.6226–3(e)(3)(iii) on the statements the pass-through partner furnishes to its affected partners (as defined in § 301.6226–3(e)(3)(i)).

(3) *Contents of statements*. Each statement described in paragraph (c)(1) or (2) of this section must include the following correct information –

(i) The name and taxpayer identification number (TIN) of the partnership that filed the AAR with respect to the adjustments reflected on the statements described in paragraph (c)(1) of this section;

(ii) The adjustment year (as defined in § 301.6241–1(a)(1)) of the partnership described in paragraph (c)(3)(i) of this section;

(iii) The extended due date for the return for the adjustment year of the partnership described in paragraph (c)(3)(i) of this section (as described in § 301.6226–3(e)(3)(ii));

(iv) The date on which the partnership described in paragraph (c)(3)(i) of this section furnished its statements required under § 301.6227–1(d);

(v) The name and TIN of the partnership that furnished the statement to the pass-through partner if different from the partnership described in paragraph (c)(3)(i) of this section;

(vi) The name and TIN of the pass-through partner;

(vii) The pass-through partner's taxable year to which the adjustments set forth in the statement described in paragraph (c)(1) of this section relate;

(viii) The name and TIN of the affected partner to whom the statement is being furnished;

(ix) The current or last address of the affected partner that is known to the pass-through partner;

(x) The affected partner's share of items as originally reported to such partner under section 6031(b) and, if applicable, section 6227, for the taxable year to which the adjustments reflected on the statement furnished to the pass-through partner relate;

(xi) The affected partner's share of partnership adjustments determined under § 301.6227–1(e)(2) as if the affected partner were the reviewed year partner and the partnership were the pass-through partner;

(xii) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(4) *Affected partners must take into account the adjustments*. A statement furnished to an affected partner in accordance with paragraph (c)(1) or (2) of this section is to be treated by the affected partner as if it were a statement described in paragraph (a) of this section. The affected partner must take into account its share of the adjustments reflected on such a statement in accordance with this section by treating references to "reviewed year partner" as "affected partner." When taking into account the adjustments as described in § 301.6226–3(e)(3)(iv), the rules under § 301.6226–3(c)(3) (regarding the increased rate of interest) do not apply.

(d) *Applicability date*–(1) *In general*. Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after De-

cember 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 13. Section 301.6231–1 is added to read as follows:

§ 301.6231–1 Notice of proceedings and adjustments.

(a) *Notices to which this section applies*. In the case of any administrative proceeding under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63), including an administrative proceeding with respect to an administrative adjustment request (AAR) filed by a partnership under section 6227, the following notices must be mailed to the partnership and the partnership representative (as described in section 6223 and § 301.6223–1)–

(1) Notice of any administrative proceeding initiated at the partnership level with respect to an adjustment of any partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) for any partnership taxable year under subchapter C of chapter 63 (notice of administrative proceeding (NAP));

(2) Notice of any proposed partnership adjustment resulting from an administrative proceeding under subchapter C of chapter 63 (notice of proposed partnership adjustment (NOPPA)); and

(3) Notice of any final partnership adjustment resulting from an administrative proceeding under subchapter C of chapter 63 (notice of final partnership adjustment (FPA)).

(b) *Time for mailing notices*—(1) *Notice of proposed partnership adjustment*. A NOPPA is timely if it is mailed before the expiration of the period for making adjustments under section 6235(a)(1) (including any extensions under section 6235(b) and any special rules under section 6235(c)).

(2) *Notice of final partnership adjustment*. An FPA may not be mailed earlier than 270 days after the date on which the NOPPA is mailed unless the partnership agrees, in writing, with the Internal Revenue Service (IRS) to waive the 270-day period. See § 301.6225–2(c)(3)(iii) for the effect of a waiver under this paragraph (b)(2) on the 270-period for requesting a modification under section 6225(c). See § 301.6232–1(d)(2) for the rules regarding a waiver of the limitations on assessment under § 301.6232–1(c).

(c) *Last known address*. A notice described in paragraph (a) of this section is sufficient if mailed to the last known address of the partnership representative and the partnership (even if the partnership or partnership representative has terminated its existence).

(d) *Notice mailed to partnership representative*–(1) *In general*. A notice described in paragraph (a) of this section will be treated as mailed to the partnership representative if the notice is mailed to the partnership representative that is reflected in the IRS records as of the date the letter is mailed.

(2) *No partnership representative in effect*. In any case in which no partnership representative designation is in effect in accordance with § 301.6223–1(f), a notice described in paragraph (a) of this section mailed to "PARTNERSHIP REPRESENTATIVE" at the last known address of the partnership satisfies the requirements of this section.

(e) *Restrictions on additional FPAs after petition filed*. The IRS may mail more than one FPA to any partnership for any partnership taxable year. However, except in the case of fraud, malfeasance, or misrepresentation of a material fact, the IRS may not mail an FPA to a partnership with respect to a partnership taxable year after the partnership has filed a timely petition for readjustment under section 6234 with respect to an FPA issued with respect to such partnership taxable year.

(f) *Withdrawal of NAP or NOPPA*. The IRS may, without consent of the partnership, withdraw any NAP or NOPPA. Except as described in § 301.6223–1(d)(2) and (e)(2), if the IRS withdraws a NAP or NOPPA under this paragraph (f), the NAP or NOPPA is treated as if it were never issued, and the withdrawn NAP or NOPPA has no effect for purposes of subchapter C of chapter 63. For instance, if the IRS withdraws a NAP with respect to a partnership taxable year, the limitation under § 301.6222–1(c)(5) regarding inconsistent treatment, and the prohibition under section 6227(c) on filing an AAR, after the mailing of a NAP no longer applies with respect to such taxable year.

(g) *Rescission of FPA*. The IRS may, with the consent of the partnership, rescind any FPA. An FPA that is rescinded is not an FPA for purposes of subchapter C of chapter 63, and the partnership cannot bring a proceeding under section 6234 with respect to such FPA.

(h) *Applicability date*–(1) *In general*. Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 14. Section 301.6232–1 is added to read as follows:

§ 301.6232–1 Assessment, collection, and payment of imputed underpayment.

(a) *In general*. An imputed underpayment determined under subchapter C of chapter 63 of the Internal Revenue Code (Code) is assessed and collected in the same manner as if the imputed underpayment were a tax imposed by subtitle A of the Code for the adjustment year (as defined in § 301.6241–1(a)(1)) except that the deficiency procedures under subchapter B of chapter 63 of the Code do not apply to an assessment of an imputed underpayment. Accordingly, no notice under section 6212 is required for, and the restrictions under section 6213 do not apply to, the assessment of any imputed underpayment. See paragraph (c) of this section for limitations on assessment and paragraph (d) of this section for exceptions to restrictions on adjustments.

(b) *Payment of the imputed underpayment*. Upon receipt of notice and demand from the Internal Revenue Service (IRS), an imputed underpayment must be paid by the partnership at the place and time stated in the notice. In the case of an adjustment requested in an administrative adjustment request (AAR) under section 6227(b)(1) that is taken into account by the partnership under § 301.6227–2(b), payment of the imputed underpayment is due on the date the AAR is filed. The IRS may assess the amount of the imputed underpayment reflected on the AAR on the date the AAR is filed. For interest with respect to an imputed underpayment, see § 301.6233(a)–1(b).

(c) *Limitation on assessment*–(1) *In general*. Except as otherwise provided by this section or subtitle F of the Code (except for subchapter B of chapter 63), no assessment of an imputed underpayment may be made (and no levy or proceeding in any court for the collection of an imputed underpayment may be made, begun, or prosecuted) before–

(i) The close of the 90th day after the day on which a notice of a final partnership adjustment (FPA) under section 6231(a)(3) was mailed; and

(ii) If a petition for readjustment is filed under section 6234 with respect to such FPA, the decision of the court has become final.

(2) *Specified similar amount*. The limitations under paragraph (c)(1) of this section do not apply in the case of a specified similar amount as defined in section 6232(f)(2).

(d) *Exceptions to restrictions on adjustments and assessments*–(1) *Adjustments treated as mathematical or clerical errors*–(i) *In general*. A notice to a partnership that, on account of a mathematical or clerical error appearing on the partnership return or as a result of a failure by a partnership-partner (as defined in § 301.6241–1(a)(7)) to comply with section 6222(a), the IRS has adjusted or will adjust partnership-related items (as defined in § 301.6241–1(a)(6)(ii)) to correct the error or to make the items consistent under section 6222(a) and has assessed or will assess any imputed underpayment (determined in accordance with § 301.6225–1) resulting from the adjustment is not considered an FPA under section 6231(a)(3). A petition for readjustment under section 6234 may not be filed with respect to such notice. The limitations under section 6232(b) and paragraph (c) of this section do not apply to an assessment under this paragraph (d)(1)(i). For the definition of mathematical or clerical error generally, see section 6213(g)(2). For application of mathematical or clerical error in the case of inconsistent treatment by a partner that fails to give notice, see § 301.6222–1(b).

(ii) *Request for abatement*–(A) *In general*. Except as provided in paragraph (d)(1)(ii)(B) of this section, a partnership that is mailed a notice described in paragraph (d)(1)(i) of this section may file with the IRS, within 60 days after the date of such notice, a request for abatement of any assessment of an imputed underpayment specified in such notice. Upon receipt of the request, the IRS must abate the assessment. Any subsequent assessment of an imputed underpayment with respect to which abatement was made is subject to the provisions of subchapter C of chapter 63 of the Code, including the limitations under paragraph (c) of this section.

(B) *Adjustments with respect to inconsistent treatment by a partnership-partner*. If an adjustment that is the subject of a notice described in paragraph (d)(1)(i) of this section is due to the failure of a partnership-partner to comply with section 6222(a), paragraph (d)(1)(ii)(A) of this section does not apply, and abatement of any assessment specified in such notice is not available. However, prior to assessment, a partnership-partner that has failed to comply with section 6222(a) may correct the inconsistency by filing an administrative adjustment request in accordance with section 6227 or filing an amended partnership return and furnishing amended statements, as appropriate.

(iii) *Partnerships that have an election under section 6221(b) in effect*. In the case of a partnership-partner that has an election under section 6221(b) in effect for the reviewed year (as defined in § 301.6241–1(a)(8)), any tax resulting from an adjustment due to the partnership-partner's failure to comply with section 6222(a) may be assessed with respect to the reviewed year partners (as defined in § 301.6241–1(a)(9)) of the partnership-partner (or indirect partners of the partnership-partner, as defined in § 301.6241–1(a)(4)). Such tax may be assessed in the same manner as if the tax were on account of a mathematical or clerical error appearing on the reviewed year partner's or indirect partner's return, except that the procedures under section 6213(b)(2) for requesting an abatement of such assessment do not apply.

(2) *Partnership may waive limitations*. A partnership may at any time by a signed notice in writing filed with the IRS waive the limitations under paragraph (c) of this section (whether or not an FPA under section 6231(a)(3) has been mailed by the IRS at the time of the waiver).

(e) *Limit on amount of imputed underpayment where no proceeding is begun*. If no proceeding under section 6234 is begun with respect to an FPA under section 6231(a)(3) before the close of the 90th day after the day on which such FPA was mailed, the amount for which the partnership is liable under section 6225 with respect to such FPA cannot exceed the amount determined in such FPA.

(f) *Applicability date*–(1) *In general*. Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 15. Section 301.6233(a)–1 is added to read as follows:

§ 301.6233(a)–1 Interest and penalties determined from reviewed year.

(a) *Interest and penalties with respect to the reviewed year*. Except to the extent provided in section 6226(c), in the case of a partnership adjustment (as defined in § 301.6241–1(a)(6)) for a reviewed year (as defined in § 301.6241–1(a)(8)), a partnership is liable for–

(1) Interest computed in accordance with paragraph (b) of this section; and

(2) Any penalty, addition to tax, or additional amount as provided under paragraph (c) of this section.

(b) *Computation of interest with respect to partnership adjustments for the reviewed year*–(1) *Interest on an imputed underpayment*. The interest imposed on an imputed underpayment resulting from partnership adjustments for the reviewed year is the interest that would be imposed under chapter 67 of the Internal Revenue

Code (Code) if the imputed underpayment were treated as an underpayment of tax for the reviewed year. The interest imposed on an imputed underpayment under paragraph (b) of this section begins on the day after the due date of the partnership return (without regard to extension) for the reviewed year and ends on the earlier of–

(i) The date prescribed for payment (as described in § 301.6232–1(b));

(ii) The due date of the partnership return (without regard to extension) for the adjustment year (as defined in § 301.6241–1(a)(1)); or

(iii) The date the imputed underpayment is fully paid.

(2) *Interest on penalties with respect to the reviewed year*. The interest imposed on any penalties, additions to tax, and additional amounts determined under paragraph (c) of this section is the interest that would be imposed under chapter 67 of the Code treating the partnership return for the reviewed year as the return of tax with respect to which such penalty, addition to tax, or additional amount is imposed.

(c) *Penalties with respect to partnership adjustments for the reviewed year*–(1) *In general*. In accordance with section 6221(a), the applicability of any penalties, additions to tax, and additional amounts that relate to an adjustment to any partnership-related item for the reviewed year is determined at the partnership level as if the partnership had been an individual subject to tax imposed by chapter 1 of the Code for the reviewed year, and the imputed underpayment were an actual underpayment of tax or understatement for such year. Nothing in this paragraph (c)(1) affects the application of any penalty, addition to tax, or additional amount that may apply to the partnership or to any reviewed year partner (as defined in § 301.6241–1(a)(9)) or to any indirect partner (as defined in § 301.6241–1(a)(4)) that is unrelated to an adjustment to a partnership-related item under subchapter C of chapter 63 of the Code. Except as provided in § 301.6225–2(d), a partner-level defense (as described in § 301.6226–3(d)(3)) may not be raised in a proceeding of the partnership.

(2) *Determination of the amount of accuracy-related penalty and fraud penalty*–(i) *In general*. The amount of any penalty under part II of subchapter A of chapter 68 of the Code (accuracy-related or fraud penalties) that relates to any partnership adjustment for the reviewed year is determined in accordance with this paragraph (c)(2). If in determining the imputed underpayment under § 301.6225–1 (or § 301.6225–2 in the case of modification), any grouping or subgrouping contains a negative adjustment (as defined in § 301.6225–1(d)(2)(ii)) and at least one positive adjustment (as defined in § 301.6225–1(d)(2)(iii)) that is subject to penalty, first apply the rules for allocating negative adjustments in paragraph (c)(2)(iii) of this section. Then, apply the rules in paragraph (c)(2)(ii) of this section to calculate penalty amounts. If there are no negative adjustments, do not apply the rules in paragraph (c)(2)(iii) of this section and instead apply only the rules in paragraph (c)(2)(ii) of this section. For all purposes under paragraph (c)(2) of this section, adjustments that do not result in the imputed underpayment (as described in § 301.6225–1(f)) and adjustments excluded from the determination of the imputed underpayment under § 301.6225–2(b)(2) are disregarded.

(ii) *Calculating the portion of an imputed underpayment subject to penalty and penalty amounts*. To determine the portion of an imputed underpayment subject to a penalty and the amount of a particular penalty, apply the following steps to all adjustments subject to penalty remaining after application of negative adjustments (as described in paragraph (c)(2)(iii) of this section) and to all adjustments subject to penalty contained in groupings or subgroupings that do not contain a negative adjustment.

(A) For purposes of applying this paragraph (c)(2)(ii)(A), disregard adjustments to credits or adjustments treated as adjustments to credits. Total all adjustments to which a particular penalty was imposed and to which the highest rate of tax in effect for the reviewed year under section 1 or 11 was applied when calculating the imputed underpayment. See § 301.6225–1(b)(1)(iv).

(B) Multiply the total in paragraph (c)(2)(ii)(A) of this section by the highest rate of tax in effect for the reviewed year under section 1 or 11.

(C) If the imputed underpayment was modified in accordance with § 301.6225–2(b)(3), repeat the steps in paragraphs (c)(2)(ii)(A) and (B) of this section for every tax rate applied in calculating the imputed underpayment by substituting the applicable tax rate determined under § 301.6225–2(b)(3) for the highest rate of tax in effect for the reviewed year under section 1 or 11.

(D) Total all amounts determined after completing the steps in paragraphs (c)(2)(ii)(A) through (C) of this section.

(E) Adjust the amount calculated in paragraph (c)(2)(ii)(D) of this section by:

(*1*) Increasing by the net adjustments subject to the penalty in the credit grouping (as described in paragraph (c)(2)(iii)(C)(*1*) of this section) after application of paragraph (c)(2)(iii)(A) of this section; or

(*2*) Decreasing in accordance with the rules in paragraph (c)(2)(iii)(C)(*2*) of this section by the amount of negative adjustments in the credit grouping if, after application of paragraph (c)(2)(iii)(A) of this section, only negative adjustments in the credit grouping remain.

(*3*) The result after completing the calculation in paragraphs (c)(2)(ii)(E)(*1*) and (*2*) of this section is the portion of the imputed underpayment to which the particular penalty was imposed.

(F) Multiply the total calculated in paragraph (c)(2)(ii)(E) of this section by the penalty rate applicable to the particular penalty. This is the total penalty amount for adjustments to which the particular penalty was imposed.

(iii) *Allocating negative adjustments*–(A) *In general*. Negative adjustments offset positive adjustments within the same grouping or, if the negative adjustment is in a subgrouping, within that same subgrouping. For purposes of applying this paragraph (c)(2)(iii), all adjustments to credits and adjustments treated as adjustments to credits are treated as grouped in the credit grouping without regard to whether the adjustments were subgrouped for purposes of § 301.6225–1 (or § 301.6225–2 in the case of modification). Adjustments that do not result in the imputed underpayment are disregarded as provided in paragraph (c)(2) of this section. Negative adjustments are allocated in accordance with the following rules:

(*1*) Negative adjustments are first applied to offset positive adjustments to which no penalties have been imposed.

(*2*) Any amount of negative adjustments remaining after application of paragraph (c)(2)(iii)(A)(*1*) of this section are applied to offset adjustments to which a penalty has been imposed at the lowest penalty rate.

(*3*) Any amount of negative adjustments remaining after application of paragraph (c)(2)(iii)(A)(*2*) of this section are applied to offset adjustments to which a penalty has been imposed at the next highest rate in ascending order of rate until no amount of negative adjustments remain or no positive adjustments to which a penalty has been imposed remain.

(B) *Allocation of negative adjustment within a penalty rate*. The Internal Revenue Service (IRS) may provide additional guidance regarding the ordering or allocation of negative adjustments for purposes of paragraph (c)(2)(iii)(A) of this section where more than one penalty is imposed at the same penalty rate.

(C) *Adjustments remaining after allocation of negative adjustments*–(*1*) *In general*. For purposes of paragraph (c)(2)(ii) of this section, any positive adjustment to which a penalty has been imposed that has not been fully offset by a negative adjustment after application of paragraph (c)(2)(iii)(A) of this section is a *net adjustment subject to penalty* remaining after allocation of negative adjustments.

(*2*) *Additional rules regarding allocation of negative credit amounts*. If, after application of paragraph (c)(2)(iii)(A) of this section, an amount of negative adjustments remain in the credit grouping, the amount of remaining negative adjustments may reduce the portion of the imputed underpayment that is subject to a penalty, but not below zero, in accordance with the following rules:

(*i*) The amount of remaining negative adjustments in the credit grouping are first applied to the portion of the imputed underpayment to which no penalty has been imposed, as calculated in accordance with paragraph (c)(2)(iii)(C)(*3*) of this section.

(*ii*) Any amount of negative adjustment in the credit grouping remaining after application of paragraph (c)(2)(iii)(C)(*2*)(*i*) of this section is applied to the portion of the imputed underpayment to which a penalty has been imposed at the lowest penalty rate as calculated in accordance with paragraph (c)(2)(ii) of this section.

(*iii*) Any amount of negative adjustments in the credit grouping remaining after application of paragraph (c)(2)(iii)(C)(*1*)(*ii*) of this section is applied to the portion of the imputed underpayment to which a penalty has been imposed at the next highest rate in ascending order of rate in accordance with paragraph (c)(2)(iii) of this section until no negative amount remains.

(*3*) *Calculating the portion of the imputed underpayment to which no penalty was imposed before the application of negative adjustments to credits*. To determine the portion of the imputed underpayment that is not subject to penalty for purposes of paragraph (c)(2)(iii)(C)(*2*)(*i*) of this section, apply the rules in paragraphs (c)(2)(ii)(A) through (E) of this section of this section but substitute adjustment to which no penalty was imposed for adjustments to which a particular penalty was imposed.

(iv) *Special rules*–(A) *Fraud penalties under section 6663*. If any portion of an imputed underpayment is determined by the IRS to be attributable to fraud, the entire imputed underpayment is treated as attributable to fraud. This paragraph (c)(2)(iv)(A) does not apply to any portion of the imputed underpayment the partnership establishes by a preponderance of the evidence is not attributable to fraud.

(B) *Substantial understatement penalty under section 6662(d)*–(*1*) *In general*. For purposes of application of the penalty under section 6662(d) (substantial understatement of income tax), the imputed underpayment is treated as an understatement under section 6662(d)(2). To determine whether an imputed underpayment treated as an understatement under this paragraph (c)(2)(iv)(B)(*1*) is a substantial understatement under section 6662(d)(1), the rules of section 6662(d)(1)(A) apply by treating the amount described in paragraph (c)(2)(iv)(B)(*2*) of this section as the tax required to be shown on the return for the taxable year under section 6662(d)(1)(A)(i).

(*2*) *Amount of tax required to be shown on the return*. The amount described in this paragraph (c)(2)(iv)(B)(*2*) is the tax that would result by treating the net income or loss of the partnership for the reviewed year, reflecting any partnership adjustments as finally determined, as taxable income described in section 1(c) (determined without regard to section 1(h)).

(C) *Reportable transaction understatement under section 6662A*. For purposes of application of the penalty under section 6662A (reportable transaction understatement penalty), the portion of an imputed underpayment attributable to an item described under section 6662A(b)(2) is treated as a reportable transaction understatement under section 6662A(b).

(D) *Reasonable cause and good faith*. For purposes of determining whether a partnership satisfies the reasonable cause and good faith exception under section 6664(c) or (d) with respect to a penalty under section 6662, section 6662A, or section 6663, the partnership is treated as the taxpayer. See § 1.6664–4 of this chapter. Accordingly, the facts and circumstances taken into account to determine whether the partnership has established reasonable cause and good faith are the facts and circumstances applicable to the partnership.

(v) *Examples*. The following examples illustrate the rules of paragraph (c) of this section. For purposes of these examples, each partnership has a calendar taxable year, and the highest tax rate in effect for all taxpayers is 40 percent for all relevant periods.

(A) *Example 1*. In an administrative proceeding with respect to Partnership's 2018 partnership return, the IRS makes a positive adjustment to ordinary income of $100. The $100 adjustment is due to negligence or disregard of rules or regulations under section 6662(c), and a 20-percent accuracy-related penalty applies under section 6662(a). The IRS also makes a positive adjustment to long-term capital gain of $300, but no penalty applies with respect to that adjustment. These are the only adjustments. The portion of the imputed underpayment to which the 20-percent penalty applies is $40 ($100 x 40 percent), and the penalty is $8 ($40 x 20 percent).

(B) *Example 2*. The facts are the same as in *Example 1* in paragraph (c)(2)(v)(A) of this section, except that the IRS makes a positive adjustment to credits of $10. The adjustment to credits is due to negligence or disregard of rules or regulations under section 6662(c), and a 20-percent accuracy-related penalty applies under section 6662(a). The portion of the imputed underpayment to which the 20-percent accuracy-related penalty applies is $50 (($100 x 40 percent) + $10), and the penalty is $10 ($50 x 20 percent).

(C) *Example 3*. The facts are the same as in *Example 2* in paragraph (c)(2)(v)(B) of this section, except that there is also a negative adjustment to ordinary income of $50 that was subgrouped under § 301.6225–1 with the $100 positive adjustment to ordinary. Because the $50 negative adjustment to ordinary income was subgrouped under § 301.6225–1 with the $100 positive adjustment to ordinary income, in determining the portion of the imputed underpayment subject to penalty, the $50 negative adjustment is applied to offset part of the $100 positive adjustment to ordinary income ($100-$50=$50). Accordingly, the portion of the imputed underpayment to which the 20-percent accuracy-related penalty applies is $30 (($50 x 40 percent) + $10), and the penalty is $6 ($30 x 20 percent).

(D) *Example 4*. The facts are the same as in *Example 3* in paragraph (c)(2)(v)(C) of this section, except that the $300 adjustment to long-term capital gain is due to a gross valuation misstatement. A 40-percent accuracy-related penalty under section 6662(a) and (h) applies to the portion of the imputed underpayment attributable to the gross valuation misstatement. The portion of the imputed underpayment to which the 20 percent accuracy-related penalty applies remains $30, and the 20-percent accuracy-related penalty remains $6. The portion of the imputed underpayment to which the 40-percent gross valuation misstatement penalty applies is $120 ($300 x 40 percent), and the gross valuation misstatement penalty is $48 ($120 x 40 percent). The total accuracy-related penalty under section 6662(a) is $54.

(E) *Example 5*. Partnership has four equal partners during its 2019 taxable year: two partners are partnerships, A and B; one partner is a tax-exempt entity, C; and the fourth partner is an individual, D. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS timely mails a notice of proposed partnership adjustment (NOPPA) to Partnership for its 2019 taxable year proposing a single partnership positive adjustment to Partnership's ordinary income by $400,000. The $400,000 positive adjustment is due to negligence or disregard of rules or regulations under section 6662(c). A 20-percent accuracy-related penalty under section 6662(a) and (c) applies to the portion of the imputed underpayment attributable to the negligence or disregard of the rules or regulations. In the NOPPA, the IRS determines an imputed underpayment of $160,000 ($400,000 x 40 percent) and that the 20-percent penalty applies to the entire imputed underpayment. The penalty is $32,000 ($160,000 x 20 percent). Partnership requests modification under § 301.6225–2(d)(3) (regarding tax-exempt partners) with respect to the amount of additional income allocated to C, and the IRS approves the modification request. As a result, Partnership's total netted partnership adjustment under § 301.6225–1(b)(2) is $300,000 ($400,000 less $100,000 allocable to C). The imputed underpayment is $120,000 (($300,000) x 40 percent), and the penalty is $24,000 ($120,000 x 20 percent).

(F) *Example 6*. The facts are the same as in *Example 5* in paragraph (c)(2)(v)(E) of this section, except in addition to the modification with respect to C's tax-exempt status, Partnership requests a modification under § 301.6225–2(d)(2) (regarding amended returns) with respect to the $100,000 of additional income allocated to D. In accordance with the rules under § 301.6225–2(d)(2), D files an amended return for D's 2019 taxable year taking into account $100,000 of additional ordinary income. In addition, in accordance with § 301.6225–2(d)(2)(viii), D takes into account on D's return the 20-percent accuracy-related penalty for negligence or disregard of rules or regulations that relates to the ordinary income adjustment. D's tax attributes for other taxable years are not affected. The IRS approves the modification request. As a result, Partnership's total netted partnership adjustment under § 301.6225–1(b)(2) is $200,000 ($400,000 less $100,000 allocable to C and $100,000 taken into account by D). The imputed underpayment, after modification, is $80,000 ($200,000 x 40 percent), and the penalty is $16,000 ($80,000 x 20 percent).

(d) *Applicability date*–(1) *In general*. Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 16. Section 301.6233(b)–1 is added to read as follows:

§ 301.6233(b)–1 Interest and penalties with respect to the adjustment year return.

(a) *Interest and penalties with respect to failure to pay imputed underpayment on the date prescribed*. In the case of any failure to pay an imputed underpayment on the date prescribed for such payment (as described in § 301.6232–1(b)), a partnership is liable for–

(1) Interest as determined under paragraph (c) of this section; and

(2) Any penalty, addition to tax, or additional amount as determined under paragraph (d) of this section.

(b) *Imputed underpayments to which this section applies*. This section applies to the portion of an imputed underpayment determined by the Internal Revenue Service (IRS) under section 6225(a)(1), or an imputed underpayment resulting from adjustments requested by a partnership in an administrative adjustment request under section 6227, that is not paid by the date prescribed for payment under § 301.6232–1(b).

(c) *Interest*. Interest determined under this paragraph (c) is the interest that would be imposed under chapter 67 of the Internal Revenue Code (Code) by treating any unpaid amount of the imputed underpayment as an underpayment of tax imposed for the adjustment year (as defined in § 301.6241–1(a)(1)). The interest under this paragraph (c) begins on the date prescribed for payment (as described in § 301.6232–1(b)) and ends on the date payment of the imputed underpayment is made.

(d) *Penalties*. If a partnership fails to pay an imputed underpayment by the date prescribed for payment (as described in § 301.6232–1(b)), section 6651(a)(2) applies to such failure, and any unpaid amount of the imputed underpayment is treated as if it were an underpayment of tax for purposes of part II of subchapter A of chapter 68 of the Code. For purposes of this section, the penalty under 6651(a)(2) is applied by treating the unpaid amount of the imputed underpayment as the unpaid amount shown as tax on a return required under subchapter A of chapter 61 of the Code.

(e) *Applicability date*–(1) *In general*. Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 17. Section 301.6234–1 is added to read as follows:

§ 301.6234–1 Judicial review of partnership adjustment.

(a) *In general*. Within 90 days after the date on which a notice of a final partnership adjustment (FPA) under section 6231(a)(3) with respect to any partnership taxable year is mailed, a partnership may file a petition for a readjustment of any partnership adjustment (as defined in § 301.6241–1(a)(6)) reflected in the FPA for such taxable year (without regard to whether an election under section 6226 has been made with respect to any imputed underpayment (as defined in § 301.6241–1(a)(3)) reflected in such FPA) with–

(1) The Tax Court;

(2) The district court of the United States for the district in which the partnership's principal place of business is located; or

(3) The Court of Federal Claims.

(b) *Jurisdictional requirement for bringing action in district court or Court of Federal Claims*. A petition for readjustment under this section with respect to any partnership adjustment may be filed in a district court of the United States or the Court of Federal Claims only if the partnership filing the petition deposits with the Internal Revenue Service (IRS), on or before the date the petition is filed, the amount of (as of the date of the filing of the petition) any imputed underpayment (as shown on the FPA) and any penalties, additions to tax, and additional amounts with respect to such imputed underpayment. If there is more than one imputed underpayment reflected in the FPA, the partnership must deposit the amount of each imputed underpayment to which the petition for readjustment relates and the amount of any penalties, additions to tax, and additional amounts with respect to each such imputed underpayment.

(c) *Treatment of deposit as payment of tax*. Any amount deposited in accordance with paragraph (b) of this section, while deposited, will not be treated as a payment of tax for purposes of the Internal Revenue Code (Code). Notwithstanding the preceding sentence, an amount deposited in accordance with paragraph (b) of this section will be treated as a payment of tax for purposes of chapter 67 of the Code (relating to interest). Interest will be allowed and paid in accordance with section 6611.

(d) *Effect of decision dismissing action*. If an action brought under this section is dismissed other than by reason of a rescission of the FPA under section 6231(d) and § 301.6231–1(g), the decision of the court dismissing the action is considered as its decision that the FPA is correct.

(e) *Amount deposited may be applied against assessment*. If the limitations on assessment under section 6232(b) and § 301.6232–1(c) no longer apply with respect to an imputed underpayment for which a deposit under paragraph (b) of this section was made, the IRS may apply the amount deposited against any such imputed underpayment that is assessed. In the case of a deposit made under this section that is in an amount in excess of the amount assessed against the partnership (excess deposit), a partnership may obtain a return of the excess deposit by making a request in writing in accordance with forms, instructions, or other guidance prescribed by the IRS.

(f) *Applicability date*–(1) *In general*. Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 18. Section 301.6235–1 is added to read as follows:

§ 301.6235–1 Period of limitations on making adjustments.

(a) *In general*. Except as provided in section 6235(c), section 905(c), or paragraph (d) of this section (regarding extensions), no partnership adjustment (as defined in § 301.6241–1(a)(6)) for any partnership taxable year may be made after the later of the date that is–

(1) 3 years after the latest of–

(i) The date on which the partnership return for such taxable year was filed;

(ii) The return due date (as defined in section 6241(3)) for the taxable year; or

(iii) The date on which the partnership filed an administrative adjustment request with respect to such taxable year under section 6227;

(2) The date described in paragraph (b) of this section with respect to a request for modification; or

(3) The date described in paragraph (c) of this section with respect to a notice of proposed partnership adjustment.

(b) *Modification requested under section 6225(c)*–(1) *In general*. For purposes of paragraph (a)(2) of this section, in the case of any request for modification of any imputed underpayment under section 6225(c), the date by which the Internal Revenue Service (IRS) may make a partnership adjustment is the date that is 270 days (plus the number of days of an extension of the period for requesting modification (as described in § 301.6225–2(c)(3)(i)) agreed to by the IRS under section 6225(c)(7) and § 301.6225–2(c)(3)(ii)) after the date on which everything required to be submitted to the IRS pursuant to section 6225(c) is so submitted.

(2) *Date on which everything is required to be submitted*–(i) *In general*. For purposes of paragraph (b)(1) of this section, the date on which everything required to be submitted to the IRS pursuant to section 6225(c) is so submitted is the earlier of–

(A) The date the period for requesting modification ends (including extensions) as described in § 301.6225–2(c)(3)(i) and (ii); or

(B) The date the period for requesting modification expires as a result of a waiver of the prohibition on mailing a notice of final partnership adjustment (FPA) under § 301.6231–1(b)(2). See § 301.6225–2(c)(3)(iii).

(ii) *Incomplete submission has no effect*. A determination by the IRS that the information submitted as part of a request for modification is incomplete has no effect on the applicability of paragraph (b)(2) of this section.

(c) *Notice of proposed partnership adjustment*. For purposes of paragraph (a)(3) of this section, the date by which the IRS may make a partnership adjustment is the date that is 330 days (plus the number of days of an extension of the modification period (as described in § 301.6225–2(c)(3)(i)) agreed to by the IRS under section 6225(c)(7) and § 301.6225–2(c)(3)(ii)) after the date the last notice of proposed partnership adjustment (NOPPA) under section 6231(a)(2) is mailed, regardless of whether modification is requested by the partnership under section 6225(c).

(d) *Extension by agreement*. The periods described in paragraphs (a), (b), and (c) of this section (including any extension of those periods pursuant to this paragraph (d)) may be extended by an agreement, in writing, entered into by the partnership and the IRS before the expiration of such period.

(e) *Examples*. The following examples illustrate the rules of this section. For purposes of these examples, each partnership has a calendar taxable year.

(1) *Example 1*. Partnership timely files its partnership return for the 2020 taxable year on March 1, 2021. On September 1, 2023, Partnership files an administrative adjustment request (AAR) under section 6227 with respect to its 2020 taxable year. As of September 1, 2023, the IRS has not initiated an administrative proceeding under subchapter C of chapter 63 of the Internal Revenue Code with respect to Partnership's 2020 taxable year. Therefore, as of September 1, 2023, under paragraph (a)(1) of this section, the period for making partnership adjustments with respect to Partnership's 2020 taxable year expires on September 1, 2026.

(2) *Example 2*. Partnership timely files its partnership return for the 2020 taxable year on the due date, March 15, 2021. On February 1, 2023, the IRS mails to Partnership and the partnership representative of Partnership (PR) a notice of administrative proceeding under section 6231(a)(1) with respect to Partnership's 2020 taxable year. Assuming no AAR has been filed with respect to Partnership's 2020 taxable year and the IRS has not yet mailed a NOPPA under section 6231(a)(2) with respect to Partnership's 2020 taxable year, the period for making partnership adjustments for Partnership's 2020 taxable year expires on the date determined under paragraph (a)(1) of this section, March 15, 2024.

(3) *Example 3*. The facts are the same as in *Example 2* in paragraph (e)(2) of this section, except that on June 1, 2023, pursuant to paragraph (d) of this section, PR signs an agreement extending the period for making partnership adjustments under section 6235(a) for Partnership's 2020 taxable year to December 31, 2025. In addition, on June 2, 2025, the IRS mails to Partnership and PR a timely NOPPA under section 6231(a)(2). Pursuant to § 301.6225–2(c)(3)(i), the period for requesting modification expires on February 27, 2026 (270 days after June 2, 2025, the date the NOPPA is mailed), but PR does not submit a request for modification on or before this date. Under paragraph (c) of this section, the date for purposes of paragraph (a)(3) of this section is April 28, 2026, the date that is 330 days from the mailing of the NOPPA. Because April 28, 2026 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section), and because no modification was requested, paragraph (a)(2) of this section is not applicable, April 28, 2026 is the date on which the period for making partnership adjustments expires under section 6235.

(4) *Example 4*. The facts are the same as in *Example 3* in paragraph (e)(3) of this section, except that PR notifies the IRS that Partnership will be requesting modification. On January 5, 2026, PR and the IRS agree to extend the period for requesting modification pursuant to section 6225(c)(7) and § 301.6225–2(c)(3)(ii) for 45 days—from February 27, 2026 to April 13, 2026. PR submits the request for modification to the IRS on April 13, 2026. Therefore, the date determined under paragraph (b) of this section is February 22, 2027, which is 270 days after the date everything required to be submitted was so submitted pursuant to paragraph (b)(2) of this section plus the additional 45-day extension of the period for requesting modification agreed to by PR and the IRS. Because February 22, 2027 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section) and the date under paragraph (a)(3) of this section (June 12, 2026, which is 330 days from the date the NOPPA was mailed plus the 45-day extension under section 6225(c)(7)), February 22, 2027 is the date on which the period for making partnership adjustments expires under section 6235.

(5) *Example 5*. The facts are the same as in *Example 4* in paragraph (e)(4) of this section, except that PR does not request an extension of the period for requesting modification. On February 1, 2026, PR submits a request for modification and PR, and the IRS agree in writing to waive the prohibition on mailing an FPA pursuant to § 301.6231–1(b)(2). Pursuant to § 301.6225–2(c)(3)(iii), the period for requesting modification expires as of February 1, 2026, rather than February 27, 2026. Accordingly, under paragraph (b)(2) of this section, the date on which everything required to be submitted pursuant to section 6225(c) is so submitted is February 1, 2026, and the 270-day period described in paragraph (b)(1) of this section begins to run on that date. Therefore, the date for purposes of paragraph (a)(2) of this section is October 29, 2026, which is 270 days after February 1, 2026, the date on which everything required to be submitted under section 6225(c) is so submitted. Because October 29, 2026 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section) and the date under paragraph (a)(3) of this section (April 28, 2026), October 29, 2026 is the date on which the period for making partnership adjustments expires under section 6235.

(6) *Example 6*. The facts are the same as in *Example 5* in paragraph (e)(5) of this section, except PR completes its submission of information to support a request for modification on July 1, 2025, but does not execute a waiver pursuant to § 301.6231–1(b)(2). Therefore, pursuant to paragraph (b)(2) of this section, February 27, 2026, the date the period requesting modification expires, is the date on which everything required to be submitted pursuant to section 6225(c) is so submitted. As a result, the 270-day period described in paragraph (b)(1) of this section expires on November 24, 2026. Because November 24, 2026 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section) and the date under paragraph (a)(3) of this section (April 28, 2026), November 24, 2026 is the date on which the period for making partnership adjustments expires under section 6235.

(f) *Applicability date*–(1) *In general*. Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 19. Section 301.6241–1 is added to read as follows:

§ 301.6241–1 Definitions.

(a) *Definitions*. For purposes of subchapter C of chapter 63 of the Internal Revenue Code (Code) and the regulations in this part under sections 6221 through 6241 of the Code –

(1) *Adjustment year*. The term *adjustment year* means the partnership taxable year in which–

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

(ii) In the case of an administrative adjustment request (AAR) under section 6227, such AAR is filed; or

(iii) In any other case, a notice of final partnership adjustment is mailed under section 6231 or, if the partnership waives the restrictions under section 6232(b) (regarding limitations on assessment), the waiver is executed by the IRS.

(2) *Adjustment year partner*. The term *adjustment year partner* means any person who held an interest in a partnership at any time during the adjustment year.

(3) *Imputed underpayment*. Except as otherwise provided in this paragraph (a)(3), the term *imputed underpayment* means the amount determined in accordance with section 6225 of the Code, § 301.6225–1, and, if applicable, § 301.6225–2. In the case of an election under section 6226, the term *imputed underpayment* means the amount determined in accordance with § 301.6226–3(e)(4). In the case of an administrative adjustment request, the term *imputed underpayment* means the amount determined in accordance with § 301.6227–2 or § 301.6227–3(c).

(4) *Indirect partner*. The term *indirect partner* means any person who has an interest in a partnership through their interest in one or more pass-through partners (as defined in paragraph (a)(5) of this section) or through a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes.

(5) *Pass-through partner*. The term *pass-through partner* means a pass-through entity that holds an interest in a partnership. A pass-through entity is a

partnership required to file a return under section 6031(a), an S corporation, a trust (other than a wholly-owned trust disregarded as separate from its owner for Federal income tax purposes), and a decedent's estate. For purposes of this paragraph (a)(5), a pass-through entity is not a wholly-owned entity disregarded as separate from its owner for Federal income tax purposes.

(6) *Partnership adjustment*–(i) *In general*. The term *partnership adjustment* means any adjustment to a partnership-related item and includes any portion of an adjustment to a partnership-related item.

(ii) *Partnership-related item*. The term *partnership-related item* means–

(A) Any item or amount with respect to the partnership (as defined in paragraph (a)(6)(iii) of this section) which is relevant in determining the tax liability of any person under chapter 1 of the Code (chapter 1) (as defined in paragraph (a)(6)(iv) of this section);

(B) Any partner's distributive share of any such item or amount; and

(C) Any imputed underpayment determined under subchapter C of chapter 63 of the Code (subchapter C of chapter 63).

(iii) *Item or amount with respect to the partnership*. For purposes of paragraph (a)(6)(ii) of this section, an item or amount is with respect to the partnership if the item or amount is shown or reflected, or required to be shown or reflected, on a return of the partnership under section 6031 or the forms and instructions prescribed by the Internal Revenue Service (IRS) for the partnership's taxable year or is required to be maintained in the partnership's books or records. Items or amounts relating to any transaction with, liability of, or basis in the partnership are with respect to the partnership only if those items or amounts are described in the preceding sentence. An item or amount shown or required to be shown on a return of a person other than the partnership (or in that person's books and records) that results after application of the Code to a partnership-related item based upon the person's specific facts and circumstances, including an incorrect application of the Code or taking into account erroneous facts and circumstances of the partner, is not an item or amount with respect to the partnership. For instance, a deduction shown on the return of a partner that results after applying a limitation under the Code (such as section 170(b)) at the partner level to a partnership-related item based on the partner's facts and circumstances is not an item or amount with respect to the partnership, even though the corresponding expense on the return of the partnership is an item or amount with respect to the partnership. Likewise, an amount on the return of a partner that is after either an incorrect application of a limitation under the Code or based on facts and circumstances of the partner that are erroneous, or both (such as an incorrect application of section 170(b)) at the partner level to a partnership-related item is not an item or amount with respect to the partnership. Similarly, a partner's adjusted basis is not with respect to the partnership because it is an item or amount shown in the partner's books or records that results after application of the Code to partnership-related items taking into account the facts and circumstances specific to that partner.

(iv) *Relevant in determining the tax liability of any person under chapter 1*. For purposes of this section, an item or amount with respect to the partnership is relevant in determining the tax liability of any person under chapter 1 without regard to the application of subchapter C of chapter 63 and without regard to whether such item or amount, or an adjustment to such item or amount, has an effect on the tax liability of any particular person under chapter 1.

(v) *Examples of partnership-related items*. The term partnership-related item includes–

(A) The character, timing, source, and amount of the partnership's income, gain, loss, deductions, and credits;

(B) The character, timing, and source of the partnership's activities;

(C) The character, timing, source, value, and amount of any contributions to, and distributions from, the partnership;

(D) The partnership's basis in its assets, the character and type of the assets, and the value (or revaluation such as under § 1.704–1(b)(2)(iv)(*f*) or (*s*) of this chapter) of the assets;

(E) The amount and character of partnership liabilities and any changes to those liabilities from the preceding tax year;

(F) The category, timing, and amount of the partnership's creditable expenditures;

(G) Any item or amount resulting from a partnership termination;

(H) Any item or amount of the partnership resulting from an election under section 754;

(I) Partnership allocations and any special allocations; and

(J) The identity of a person as a partner in the partnership.

(vi) *Examples*. The following examples illustrate the provisions of this section. For purposes of these examples, Partnership is subject to the provisions of subchapter C of chapter 63 and all taxpayers are calendar year taxpayers.

(A) *Example 1*. Partnership enters into a transaction with A to purchase widgets for $100 in taxable year 2020. Partnership pays A $100 for the widgets. Any deduction or expense of the Partnership for the purchase of the widgets is an item or amount with respect to Partnership because it is shown on Partnership's return and is relevant to determining the liability of any person under chapter 1 pursuant to paragraphs (a)(6)(iii) and (iv) of this section. Therefore, the deduction or expense is a partnership-related item. However, the income to A resulting from the transaction with Partnership is not an item or amount with respect to Partnership under paragraph (a)(6)(iii) of this section because although the amount of income relates to a transaction with Partnership and Partnership is required to show a deduction or expense related to the payment to A, the amount of income to A is not shown or required to be shown on Partnership's return. It is only required to be shown of the return of A, a person other than Partnership and requires determinations about A's reporting of the item. Accordingly, the amount of income shown, or required to be shown, by A on his return is not a partnership-related item.

(B) *Example 2*. B loans Partnership $100 in Partnership's 2020 taxable year. Partnership makes an interest payment to B in 2020 of $5. Partnership's liability relating to the loan by B to Partnership and the $5 of interest expense paid by the Partnership are items or amounts that are with respect to Partnership because they were shown on Partnership's return and are relevant in determining the liability of any person under chapter 1 pursuant to paragraphs (a)(6)(iii) and (iv) of this section. However, the treatment of the loan by B and the amount of interest income received by B are not items or amounts with respect to Partnership under paragraph (a)(6)(iii) of this section because although they relate to a transaction with or liability of Partnership and Partnership's treatment of the loan is shown on Partnership's return, B's treatment of the loan and the amount of interest income to B are shown, or required to be shown, on the return of B, a person other than Partnership and require determinations about B's reporting of the items. Accordingly, the loan as treated by B and the amount of interest income to B is not a partnership-related item.

(C) *Example 3*. On its partnership return for the 2020 tax year, Partnership reported $200 of non-cash charitable contributions related to its contribution of merchandise. Partnership has two equal partners for the 2020 tax year: C and D, both individuals. Partnership correctly reports $100 in non-cash charitable contributions to both C and D for the 2020 taxable year. On her return for the 2020 taxable year, C erroneously deducts the entire $100 of non-cash charitable contributions, even though C's deduction for charitable contributions would be limited by section 170(b)(1)(A) to $50 because of C's income. The $100 of non-cash charitable contribution reported by Partnership to C is a partnership-related item. However, the amount of the deduction taken by C on her return for 2020 and the amount of that deduction allowed after application of the limitation contained in section 170(b)(1)(A) to the $100 in non-cash charitable contributions reported by Partnership to C is not a partnership-related item under paragraph (a)(6)(ii) of this section because it is not with respect to the partnership.

(D) *Example 4*. The facts are the same as in *Example 3* in paragraph (a)(6)(vi)(C) of this section. On his return for the 2020 taxable year, D also deducts the entire $100 in charitable contributions but treats the charitable contributions as if they were cash contributions, instead of non-cash contributions. D does not file a notice of inconsistent treatment under section 6222. If D had treated the $100 in charitable contributions as non-cash contributions, D's deduction for the charitable contributions from Partnership would have be limited by section 170(b)(1)(A) due to D's income. D's deduction of the $100 in charitable contributions is an item or amount shown on D's return, derives from the charitable contributions reported by the partnership, and is subject to the application of the limitation under section 170(b)(1)(A). Therefore, D's deduction is not an item or amount with respect to the partnership. The charitable contribution reported by the partnership and its character are items or amounts with respect to the partnership pursuant to paragraph (a)(6)(iii) of this section. An adjustment to the character of the contributions is a partnership adjustment. Because D's treatment of the charitable contributions is inconsistent with the treatment of that item by Partnership on its partnership return, the IRS may make that partnership adjustment in a proceeding with respect to D and determine and assess any underpayment that results from conforming D's treatment to the treatment of the contributions by Partnership and applying the limit in section 170(b)(1)(A). See § 301.6222–1(b).

(7) *Partnership-partner*. The term *partnership-partner* means a partnership that holds an interest in another partnership.

(8) *Reviewed year*. The term *reviewed year* means the partnership taxable year to which a partnership adjustment relates.

(9) *Reviewed year partner*. The term *reviewed year partner* means any person who held an interest in a partnership at any time during the reviewed year.

(10) *Tax attribute*. A tax attribute is anything that can affect the amount or timing of a partnership-related item (as defined in paragraph (a)(6)(ii) of this section) or that can affect the amount of tax due in any taxable year. Examples of tax attributes include, but are not limited to, basis and holding period, as well as the character of items of income, gain, loss, deduction, or credit and carryovers and carrybacks of such items.

(b) *Applicability date*–(1) *In general*. Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 20. Section 301.6241–2 is added to read as follows:

§ 301.6241–2 Bankruptcy of the partnership.

(a) *Coordination between Title 11 and proceedings under subchapter C of chapter 63*–(1) *In general*. If a partnership is a debtor in a case under Title 11 of the United States Code (Title 11 case), the running of any period of limitations under section 6235 with respect to the time for making a partnership adjustment (as defined in § 301.6241–1(a)(6)) and under sections 6501 and 6502 with respect to the assessment or collection of any imputed underpayment (as defined in § 301.6241–1(a)(3)) determined under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) is suspended during the period the Internal Revenue Service (IRS) is prohibited by reason of the Title 11 case from making the adjustment, assessment, or collection until–

(i) 60 days after the suspension ends, for adjustments or assessments; and

(ii) 6 months after the suspension ends, for collection.

(2) *Interaction with section 6232(b)*. The filing of a proof of claim or request for payment (or the taking of any other action) in a Title 11 case is not be treated as an action prohibited by section 6232(b) (regarding limitations on assessment).

(3) *Suspension of the time for judicial review*. In a Title 11 case, the running of the period specified in section 6234 (regarding judicial review of partnership adjustments) is suspended during the period during which the partnership is prohibited by reason of the Title 11 case from filing a petition under section 6234, and for 60 days thereafter.

(4) *Actions not prohibited*. The filing of a petition under Title 11 does not prohibit the following actions:

(i) An administrative proceeding with respect to a partnership under subchapter C of chapter 63;

(ii) The mailing of any notice with respect to a proceeding with respect to a partnership under subchapter C of chapter 63, including:

(A) A notice of administrative proceeding;

(B) A notice of proposed partnership adjustment; and

(C) A notice of final partnership adjustment;

(iii) A demand for tax returns;

(iv) The assessment of any tax, including the assessment of any imputed underpayment with respect to a partnership; and

(v) The issuance of notice and demand for payment of an assessment under subchapter C of chapter 63 (but see section 362(b)(9)(D) of Title 11 of the United States Code regarding the timing of when a tax lien takes effect by reason of such assessment).

(b) *Applicability date*–(1) *In general*. Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 21. Section 301.6241–3 is added to read as follows:

§ 301.6241–3 Treatment where a partnership ceases to exist.

(a) *Former partners take adjustments into account*–(1) *In general*. If the Internal Revenue Service (IRS) determines that any partnership (including a partnership-partner as defined in § 301.6241–1(a)(7)) ceases to exist (as defined in paragraph (b) of this section) before any partnership adjustment (as defined in § 301.6241–1(a)(6)) under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) takes effect (as described in paragraph (c) of this section), the partnership adjustment is taken into account by the former partners (as described in paragraph (d) of this section) of the partnership in accordance with paragraph (e) of this section.

(2) *Partnership no longer liable for any unpaid amounts resulting from a partnership adjustment*. A partnership that ceases to exist is no longer liable for any unpaid amounts resulting from a partnership adjustment required to be taken into account by a former partner under this section.

(3) *Application of this section to partnership-partners*. This section applies to a partnership-partner and its former partners, regardless of whether the partnership-partner has an election under section 6221(b) in effect for any relevant partnership taxable year.

(b) *Cease to exist defined*–(1) *In general*. If a partnership ceases to exist, the IRS will notify the partnership and the former partners (as defined in paragraph (d) of this section), in writing, within 30 days of such determination using the last known address of the partnership and the former partners. A failure by the IRS to send a notification under this paragraph (b)(1) to a former partner of the partnership does not invalidate the determination by the IRS that the partnership ceases to exist. If an audited partnership (as defined in § 301.6226–3(e)(1)) ceases to exist, the IRS will also notify the partnership representative for the reviewed year. For purposes of this section, a partnership ceases to exist if the IRS makes a determination that a partnership ceases to exist because:

(i) The partnership terminates within the meaning of section 708(b)(1); or

(ii) The partnership does not have the ability to pay, in full, any amount due under the provisions of subchapter C of chapter 63 for which the partnership is or becomes liable. For purposes of this section, a partnership does not have the ability to pay if the IRS determines that the amount due with respect to the partnership is not collectible based on the information the IRS has at the time of such determination.

(2) *Exceptions*. For purposes of this section, the IRS will not determine that a partnership ceases to exist solely because the partnership has –

(i) A valid election under section 6226 in effect with respect to any imputed underpayment (as defined in § 301.6241–1(a)(3));

(ii) Received a statement under section 6226(a)(2) (or § 301.6226–3(e)) and has furnished statements to its partners in accordance with § 301.6226–3(e)(3); or

(iii) Not paid any amount required to be paid under subchapter C of chapter 63.

(3) *Year in which a partnership ceases to exist*. If a partnership terminates under section 708(b)(1), the partnership ceases to exist on the last day of the partnership's final taxable year. If a partnership does not have the ability to pay, the partnership ceases to exist on the date that the IRS makes a determination under paragraph (b)(1) of this section that the partnership ceases to exist.

(4) *Limitation on IRS determination that partnership ceases to exist*. In no event may the IRS determine that a partnership ceases to exist with respect to a partnership adjustment after the expiration of the period of limitations on collection applicable to the assessment made against the partnership for the amount due resulting from such adjustment.

(c) *Partnership adjustment takes effect*–(1) *Full payment of amounts resulting from a partnership adjustment*. For purposes of this section, a partnership adjustment under subchapter C of chapter 63 takes effect when there is full payment of amounts resulting from a partnership adjustment. For purposes of this section, *full payment of amounts resulting from a partnership adjustment* means all amounts due under subchapter C of chapter 63 resulting from the partnership adjustment are fully paid by the partnership.

(2) *Partial payment of amount due by the partnership*. If a partnership pays part, but not all, of any amount due resulting from a partnership adjustment before the partnership ceases to exist, the former partners (as defined in paragraph (d) of this section) of the partnership that has ceased to exist are not required to take into account any partnership adjustment to the extent amounts have been paid by the partnership with respect to such adjustment. The notification that the IRS has determined that the partnership has ceased to exist will include information regarding the portion of the partnership adjustments with respect to which appropriate amounts have not already been paid by the partnership and therefore must be taken into account by the former partners (described in paragraph (d) of this section) in accordance with paragraph (e) of this section.

(d) *Former partners*–(1) *Adjustment year partners*–(i) *In general*. Except as described in paragraphs (d)(1)(ii) and (d)(2) of this section, the term *former partners* means, for a partnership that has ceased to exist, the partners of the partnership during the adjustment year (as defined in § 301.6241–1(a)(1)) that corresponds to the reviewed year for which the adjustments were made.

(ii) *Partnership-partner ceases to exist*. If the adjustment year partner is a partnership-partner that the IRS has determined ceased to exist, the partners of such partnership-partner during the partnership-partner's taxable year that includes the end of the adjustment year of the partnership that is subject to a proceeding under subchapter C of chapter 63 are the former partners for purposes of this section. If the partnership-partner ceased to exist before the partnership-partner's taxable year that includes the end of the adjustment year of the partnership that is subject to a proceeding under subchapter C of chapter 63, the former partners for purposes of this section are the partners of such partnership-partner during the last partnership taxable year for which the a partnership return of the partnership-partner under section 6031 is filed.

(2) *No adjustment year partners*. If there are no adjustment year partners of a partnership that ceases to exist, the term *former partners* means the partners of the partnership during the last taxable year for which a partnership return under section 6031 was filed with respect to such partnership. For instance, if a partnership terminates under section 708(b)(1) before the adjustment year and files a final partnership return for the partnership taxable year of such partnership, the former part-

ners for purposes of this section are the partners of the partnership during the partnership taxable year for which a final partnership return is filed.

(e) *Taking adjustments into account*–(1) *In general*. For purposes of paragraph (a) of this section, a former partner of a partnership that ceases to exist takes a partnership adjustment into account as if the partnership had made an election under section 6226 (regarding the alternative to payment of the imputed underpayment). A former partner must take into account the former partner's share of a partnership adjustment as set forth in the statement described in paragraph (e)(2) of this section in accordance with § 301.6226–3.

(2) *Statements furnished to former partners*. If a partnership is notified by the IRS that the partnership has ceased to exist as described in paragraph (b)(1) of this section, the partnership must furnish to each former partner a statement reflecting such former partner's share of the partnership adjustment required to be taken into account under this section and file a copy of such statement with the IRS in accordance with the rules under § 301.6226–2, except that –

(i) The adjustments are taken into account by the applicable former partner (as described in paragraph (d) of this section), rather than the reviewed year partners (as defined in § 301.6241–1(a)(9)); and

(ii) The partnership must furnish statements to the former partners and file the statements with the IRS no later than 30 days after the date of the notification to the partnership that the IRS has determined that the partnership has ceased to exist.

(3) *Authority to issue statements*. If any statements required by paragraph (e) of this section are not timely furnished to a former partner and filed with the IRS in accordance with paragraph (e)(2)(ii) of this section, the IRS may notify the former partner in writing of such partner's share of the partnership adjustments based on the information reasonably available to the IRS at the time such notification is provided. For purposes of paragraph (e) of this section, a notification to a former partner under this paragraph (e)(3) is treated the same as a statement required to be furnished and filed under paragraph (e)(2) of this section.

(f) *Examples*. The following examples illustrate the provisions of this section. For purposes of the examples, all partnerships and partners are calendar year taxpayers and each partnership is subject to the provisions of subchapter C of chapter 63 of the Code (unless otherwise stated).

(1) *Example 1*. The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of Partnership. During 2023, in accordance with section 6235(b), Partnership extends the period of limitations on adjustments under section 6235(a) until December 31, 2025. On February 1, 2025, the IRS mails Partnership a notice of final partnership adjustment (FPA) that determines partnership adjustments that result in a single imputed underpayment. Partnership does not timely file a petition under section 6234 and does not make a valid election under section 6226. On June 2, 2025, the IRS mails Partnership notice and demand for payment of the amount due resulting from the adjustments determined in the FPA. Partnership fails to make a payment. On September 1, 2029, the IRS determines Partnership ceases to exist for purposes of this section because the Partnership does not have the ability to pay under paragraph (b)(1)(ii) of this section. Under § 301.6241–1(a)(1), the adjustment year is 2025 and A and B, both individuals, are the only adjustment year partners of Partnership during 2025. Accordingly, under paragraph (d)(1) of this section, A and B are former partners. Therefore, A and B are required to take their share of the partnership adjustments determined in the FPA into account under paragraph (e) of this section.

(2) *Example 2*. The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of P, a partnership. G, a partnership that has an election under section 6221(b) in effect for the 2020 taxable year, is a partner of P during 2020 and for every year thereafter. On February 3, 2025, the IRS mails P an FPA that determines partnership adjustments that result in a single imputed underpayment. P does not timely file a petition under section 6234 and does not make a timely election under section 6226. On May 6, 2025, the IRS mails P notice and demand for payment of the amount due resulting from the adjustments determined in the FPA. P does not make a payment. On September 1, 2025, the IRS determines P ceases to exist for purposes of this section because P does not have the ability to pay under paragraph (b)(1)(ii) of this section. G terminated under section 708(b)(1) on December 31, 2024. On September 1, 2025, the IRS determines that G ceased to exist in 2024 for purposes of this section in accordance with paragraph (b)(1)(i) of this section. J and K, individuals, were the only partners of G during 2024. Therefore, under paragraph (d)(1)(ii) of this section, J and K, the partners of G during G's 2024 partnership taxable year, are the former partners of G for purposes of this section. Therefore, J and K are required to take into account their share of the adjustments contained in the statement furnished by P to G in accordance with paragraph (e) of this section.

(g) *Applicability date*–(1) *In general*. Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 22. Section 301.6241–4 is added to read as follows:

§ 301.6241–4 Payments nondeductible.

(a) *Payments nondeductible*. No deduction is allowed under subtitle A of the Internal Revenue Code (Code) for any payment required to be made by a partnership under subchapter C of chapter 63 of the Code (subchapter C of chapter 63). Payment by a partnership of any amount required to be paid under subchapter C of chapter 63, including any imputed underpayment (as defined in § 301.6241–1(a)(3)), or interest, penalties, additions to tax, or additional amounts with respect to an imputed underpayment, is treated as an expenditure described in section 705(a)(2)(B).

(b) *Applicability date*–(1) *In general*. Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 23. Section 301.6241–5 is added to read as follows:

§ 301.6241–5 Extension to entities filing partnership returns.

(a) *Entities filing a partnership return*. Except as described in paragraph (c) of this section, an entity that files a partnership return for any taxable year is subject to the provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) with respect to such taxable year even if it is determined that the entity filing the partnership return was not a partnership for such taxable year. Accordingly, any partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) and any person holding an interest in the entity, either directly or indirectly, at any time during that taxable year are subject to the provisions of subchapter C of chapter 63 for such taxable year.

(b) *Partnership return filed but no entity found to exist*. Paragraph (a) of this section also applies where a partnership return is filed for a taxable year, but the IRS determines that no entity existed at all for such taxable year. For purposes of applying paragraph (a) of this section, the partnership return is treated as if it were filed by an entity.

(c) *Exceptions*. Paragraph (a) of this section does not apply to –

(1) Any taxable year for which an election under section 6221(b) is in effect, treating the return as if it were filed by a partnership for the taxable year to which the election relates; and

(2) Any taxable year for which a valid section 761(a) election is made (regarding election out of subchapter K of chapter 1 of the Internal Revenue Code for certain unincorporated organizations).

(d) *Applicability date*–(1) *In general*. Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Par. 24. Section 301.6241–6 is added to read as follows:

§ 301.6241–6 Coordination with other chapters of the Internal Revenue Code.

(a) *Coordination with other chapters*–(1) *In general*. Subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) only applies to tax imposed by chapter 1 of the Internal Revenue Code (Code) and not to any tax imposed (including any amount required to be deducted or withheld) under any chapter of the Code other than chapter 1 of the Code (chapter 1), including chapter 2, 2A, 3, or 4 of the Code. Accordingly, for purposes of determining taxes imposed under chapters of the Code other than chapter 1, the Internal Revenue Service (IRS) may make an adjustment to any partnership-related item (as defined in § 301.6241–1(a)(6)(ii)) in a proceeding that is not under subchapter C of chapter 63. To the extent an adjustment or determination is made under subchapter C of chapter 63 for purposes of chapter 1 and is relevant in determining tax imposed under a chapter of the Code other than chapter 1, such adjustment or determination must be taken into account for purposes of determining such tax.

(2) *Examples*. The following examples illustrate the rules of paragraph (a) of this section as applied to cases in which a partnership has a withholding obligation under chapter 3 or chapter 4 with respect to income that the partnership earns. For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63 of the Code, and the partnership and its partners are calendar year taxpayers.

(i) *Example 1*. Partnership, a partnership created or organized in the United States, has two equal partners, A and B. A is a nonresident alien who is a resident of Country A, and B is a U.S. citizen. In 2018, Partnership earned $200 of U.S. source royalty income. Partnership was required to withhold 30 percent of the gross amount of the royalty income allocable to A unless Partnership had documentation that it could rely on to establish that A was entitled to a reduced rate of withholding. See §§ 1.1441–1(b)(1) and 1.1441–5(b)(2)(i)(A) of this chapter. Partnership withheld $15 from the $100 of royalty income allocable to A based on its incorrect belief that A is entitled to a reduced rate of withholding under the U.S.-Country A Income Tax Treaty. In 2020, the IRS determines in an examination of Partnership's Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, that Partnership should have withheld $30 instead of $15 on the $100 of royalty income allocable to A because Partnership failed to obtain documentation from A establishing a valid treaty claim for a reduced rate of withholding. The tax imposed on Partnership for its failure to withhold on that income, however, is not a tax imposed by chapter 1. Rather, it is a tax imposed by chapter 3, which is not a partnership-related item under § 301.6241–1(a)(6)(ii). Therefore, in accordance with section 6221(a), the adjustment to increase Partnership's withholding tax liability by $15 is not determined under subchapter C of chapter 63, and instead must be determined as part of the Form 1042 examination.

(ii) *Example 2*. Partnership, a partnership created or organized in the United States, has two equal partners, A and B. A is a nonresident alien who is a resident of Country A, and B is a U.S. citizen. In 2018, Partnership earned $100 of U.S. source dividend income. Partnership was required to report the dividend income on its 2018 Form 1065, U.S. Return of Partnership Income, and withhold 30 percent of the gross amount of the dividend income allocable to A unless Partnership had documentation that it could rely on to establish that A was entitled to a reduced rate of withholding. See §§ 1.1441–1(b)(1) and 1.1441–5(b)(2)(i)(A) of this chapter. In 2020, in an examination of Partnership's Form 1042, the IRS determines that Partnership earned but failed to report the $100 of U.S. source dividend income in 2018. The adjustment to increase Partnership's dividend income by $100 is an adjustment to a partnership-related item. The tax imposed on Partnership for its failure to withhold on that income, however, is not a tax imposed by chapter 1; rather, it is a tax imposed by chapter 3. Pursuant to § 301.6221(a)–1(a), only chapter 1 tax attributable to adjustments to partnership-related items is assessed under subchapter C of chapter 63. Therefore, because the tax imposed with respect to the adjustment is a chapter 3 tax, under paragraph (a)(1) of this section, the IRS may determine, assess, and collect chapter 3 tax attributable to an adjustment to a partnership-related item without conducting a proceeding under subchapter C of chapter 63. Accordingly, the IRS may determine the chapter 3 tax in the examination of Partnership's Form 1042 by adjusting Partnership's withholding tax liability by an additional $15 for failing to withhold on the $50 of dividend income allocable to A. However, the IRS must initiate an administrative proceeding under subchapter C of chapter 63 to make any adjustments for purposes of chapter 1 attributable to the income. If the IRS subsequently initiates an administrative proceeding under subchapter C of chapter 63 and makes an adjustment to the same item of income, the portion of the dividend income allocable to A will be disregarded in the calculation of the total netted partnership adjustment to the extent that the chapter 3 tax has been collected with respect to such income. See § 301.6225–1(b)(3).

(b) *Coordination with chapters 3 and 4*–(1) *In general*. In the case of any tax imposed under chapter 3 or chapter 4 that is determined with respect to a partnership adjustment determined under subchapter C of chapter 63 for purposes of chapter 1, such tax is determined with respect to the reviewed year (as defined in § 301.6241–1(a)(8)) and is imposed (or required to be deducted and withheld) with respect to the adjustment year (as defined in § 301.6241–1(a)(1)).

(2) *Definitions*. The following definitions apply for purposes of this paragraph (b) and the regulations under subchapter C of chapter 63.

(i) *Amount subject to withholding*. The term *amount subject to withholding* means an amount subject to withholding (as defined in § 1.1441–2(a) of this chapter), a withholdable payment (as defined in § 1.1473–1(a) of this chapter), or the allocable share of effectively connected taxable income (as computed under § 1.1446–2(b) of this chapter).

(ii) *Chapter 3*. The term *chapter 3* means sections 1441 through 1464 of the Code, but does not include section 1443(b) of the Code.

(iii) *Chapter 4*. The term *chapter 4* means sections 1471 through 1474 of the Code.

(3) *Partnership pays an imputed underpayment*. If a partnership pays an imputed underpayment (as determined under § 301.6225–1(b)) and the total netted partnership adjustment (as calculated under § 301.6225–1(b)(2)) includes a partnership adjustment to an amount subject to withholding, the partnership is treated as having paid (at the time that the imputed underpayment is paid) the amount required to be withheld with respect to that partnership adjustment under chapter 3 or chapter 4 for purposes of applying §§ 1.1463–1 and 1.1474–4 of this chapter. See § 301.6225–1(b)(3) for the coordination rule that applies for calculating an imputed underpayment when an adjustment is made to an amount subject to withholding for which tax has been collected under chapter 3 or chapter 4.

(4) *Partnership makes an election under section 6226 with respect to an imputed underpayment*–(i) *In general*. A partnership that makes an election under § 301.6226–1 with respect to an imputed underpayment must pay the amount of tax required to be withheld under chapter 3 or chapter 4 on the amount of any adjustment set forth in the statement described in § 301.6226–2(a) to the extent that it is an adjustment to an amount subject to withholding, and the IRS has not already collected tax attributable to the adjustment under chapter 3 or chapter 4. The partnership must pay the amount due under this paragraph (b)(4)(i) on or before the due date of the partnership return for the adjustment year (without regard to extension), and must make the payment in the manner prescribed by the IRS in forms, instructions, and other guidance. For the rules governing partners subject to the taxes imposed by chapters 3 and 4 when the partner receives a statement under § 301.6226–2, see § 301.6226–3(f). See § 301.6226–3(e)(3)(v) for the application of the rules of this paragraph (b)(4) to pass-through partners (as defined in § 301.6241–1(a)(5)).

(ii) *Reduced rate of tax*. A partnership may reduce the amount of tax it is required to pay under paragraph (b)(4)(i) of this section to the extent that it can associate valid documentation from a reviewed year partner pursuant to the regulations under chapter 3 or chapter 4 (other than pursuant to § 1.1446–6 of this chapter) with the portion of the adjustment that would have been subject to a reduced rate of tax in the reviewed year. For this purpose, the partnership may rely on documentation that the partnership possesses that is valid with respect to the reviewed year (determined without regard to the expiration after the reviewed year of any validity period prescribed in § 1.1441–1(e)(4)(ii), § 1.1446–1(c)(2)(iv)(A), or § 1.1471–3(c)(6)(ii) of this chapter), or new documentation that the partnership obtains from the reviewed year partner that includes a signed affidavit stating that the information and representations associated with the documentation are accurate with respect to the reviewed year.

(iii) *Reporting requirements*. A partnership required to pay tax under paragraph (b)(4)(i) of this section must file the appropriate return and issue information returns as required by regulations under chapter 3 or chapter 4. For return and information return requirements, see §§ 1.1446–3(d)(1)(iii); 1.1461–1(b), (c); and 1.1474–1(c), (d) of this chapter. The partnership must file the return and issue information returns for the year that includes the date on which the partnership pays the tax required to be withheld under paragraph (b)(4)(i) of this section. The partnership must report the information on the return and information returns in the manner prescribed by the IRS in forms, instructions, and other guidance.

(iv) *Partners subject to withholding*. A reviewed year partner that is subject to withholding under paragraph (b)(4)(i) of this section must follow the rules under § 301.6226–3(f).

(c) *Applicability date*–(1) *In general*. Except as provided in paragraph (c)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017, and ending after August 12, 2018.

(2) *Election under § 301.9100–22 in effect*. This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

Kirsten Wielobob,
Deputy Commissioner for Services and Enforcement.

Approved: December 17, 2018.

David J. Kautter,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on February 21, 2019, 11:15 a.m., and published in the issue of the Federal Register for February 27, 2019, 84 F.R. 6468)

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26 CFR 1.42–5: Monitoring compliance with low income housing credit requirements

T.D. 9848

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that amend the compliance monitoring regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code (Code). These final regulations revise and clarify the requirement to conduct physical inspections and review low-income certifications and other documentation. The final regulations will affect owners of low-income housing projects that claim the credit, the tenants in those low-income housing projects, and the State and local

housing credit agencies that administer the credit.

DATES: *Effective date*: These regulations are effective on February 26, 2019.

Applicability Dates: For dates of applicability see § 1.42–5(h)(2).

FOR FURTHER INFORMATION CONTACT: Barbara Campbell or YoungNa Lee, (202) 317–4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to finalize rules relating to section 42 of the Code. On February 25, 2016, the Department of the Treasury (Treasury Department) and the IRS published temporary regulations (T.D. 9753) in the **Federal Register** (81 FR 9333), which amended § 1.42–5 of the Income Tax Regulations.

Section 42(m)(1) provides that the owners of an otherwise-qualifying building are not entitled to the housing credit dollar amount that is allocated to the building unless, among other requirements, the allocation is pursuant to a qualified allocation plan (QAP). A QAP provides standards by which a State or local housing credit agency or its Authorized Delegate within the meaning of § 1.42–5(f)(1) (Agency) is to make these allocations. A QAP also provides a procedure that an Agency must follow in monitoring for compliance with the provisions of section 42. A plan fails to be a QAP unless, in addition to other requirements, it provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of section 42 and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(Section 42(m)(1)(B)(iii)).

Section 1.42–5 (the compliance-monitoring regulations) describes some of the provisions that must be part of any QAP. As part of its compliance-monitoring responsibilities, an Agency must perform physical inspections and low-income certification review.

The compliance-monitoring regulations specifically provide that, for each low-income housing project, an Agency must conduct on-site inspections of all buildings within its jurisdiction by the end of the second calendar year following the year the last building in the project is placed in service (the all-buildings requirement). Prior to the issuance of the temporary regulations, the regulations also provided that, for at least 20 percent of the project's low-income units (the 20-percent rule), the Agency must both inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those same units (the same-units requirement).

Under the temporary regulations, guidance published in the Internal Revenue Bulletin may provide exceptions from, or alternative means of satisfying, the inspection provisions of § 1.42–5(d). Rev. Proc. 2016–15 (2016–11 I.R.B. 435) was published concurrently with the temporary regulations and provides that the U.S. Housing and Urban Development (HUD) Real Estate Assessment Center Protocol (the REAC protocol) satisfies both § 1.42–5(d) and the physical inspection requirements of § 1.42–5T(c)(2)(ii) and (iii). The revenue procedure provides that, in a low-income housing project, the minimum number of low-income units that must undergo physical inspection is the lesser of 20 percent of the low-income units in the project, rounded up to the nearest whole number of units, or the number of low-income units set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart in the revenue procedure (the REAC numbers). The revenue procedure also applies the same rule to determine the minimum number of units that must undergo low-income certification review.

The temporary regulations also required that Agencies continue to comply with the all-buildings requirement unless guidance published in the Internal Revenue Bulletin pursuant to § 1.42–5T(a)(iii) provides otherwise. Rev. Proc. 2016–15 provides for such an exception. Under Rev. Proc. 2016–15, the all-buildings requirement does not apply to an Agency that uses the REAC protocol to satisfy the physical inspection requirement, because the Treasury Department and the IRS have determined that the REAC protocol is an acceptable method for satisfying both § 1.42–5(d) and the physical inspection requirement of § 1.42–5T(c)(2)(ii) and (iii).

Finally, the temporary regulations decoupled the physical inspection and low-income certification review and ended the same-units requirement. Accordingly, an Agency is no longer required to conduct a physical inspection and low-income certification review of the same unit. Because the units no longer needed to be the same, an Agency may choose a different number of units for physical inspection and for low-income certification review provided the Agency chooses at least the minimum number of low-income units. Further, an Agency may choose to conduct a physical inspection and low-income certification review at different times.

On the same day the temporary regulations were published, the Treasury Department and the IRS also published a notice of proposed rulemaking (REG–150349–12, 81 FR 9379) (the proposed regulations). The text of the proposed regulations incorporated by cross-reference the text of the temporary regulations. The Treasury Department and the IRS received written comments on the proposed regulations. No requests for a public hearing were made, and no public hearing was held.

The Treasury Department and the IRS considered the written comments in light of the questions presented in the preamble of the temporary regulations. The Treasury Department and the IRS resolved those comments and questions concerning the temporary regulations and the interim guidance as discussed in this preamble and incorporated in this Treasury Decision.

Summary of Comments and Explanation of Provisions

I. *Whether the REAC numbers should replace the 20-percent rule for physical inspection and low-income certification review*

Historically, the Treasury Department and the IRS have not required an Agency physically to inspect every low-income residential unit in a low-income project.

Instead, if physical inspection of a representative random sample of units yielded satisfactory results, the Agency was permitted to infer that the uninspected units were similar. In such an exercise, a critical question is how large a sample is needed to support confidence in that inference. Decades ago, the Treasury Department and the IRS determined that a sample was adequate if it included at least 20 percent of a project's low-income units, regardless of the total number of low-income units in the project. (T.D. 8430, 57 FR 40121, September 2, 1992).

The REAC protocol requires sample sizes that differ from those that the Treasury Department and the IRS had required. In developing that protocol, HUD sought to determine sample sizes that would yield equally reliable inferences regardless of the size of the number of residential units in a project. HUD's statistical analysis produced minimum sample sizes that are much lower than 20 percent of large projects' units but somewhat higher than 20 percent of total units for small projects. The implication of the HUD conclusions was that the tax regulations' 20 percent requirement for low-income housing credit inspections may have been unnecessarily burdensome for large projects and may have failed adequately to assess habitability in smaller ones.

In the temporary regulations the Treasury Department and the IRS responded to that implication with a two-step process—minimum sample size was reduced for large projects, and taxpayers were asked whether analogous statistical considerations should be applied to increase minimum sample sizes for small ones.

First, under the temporary regulations, the 20-percent rule and the REAC numbers (if an Agency is using the REAC protocol) are used by an Agency for purposes of conducting physical inspections and the low-income certification reviews. Rev. Proc. 2016–15 provides that an Agency must conduct on-site inspections and low-income certification review of the lesser of—

(1) 20 percent of the low-income units in the low-income housing project, rounded up to the nearest whole number of units, or

(2) The Minimum Unit Sample Size set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart. (The numbers in the chart come from the REAC protocol.)

Second, in the preamble to T.D. 9753, the Treasury Department and the IRS expressed concern about application of the 20-percent rule for projects with a relatively small number of low-income units. The concern is that, in smaller projects, physical inspections and the low-income certification review of 20 percent of units (even a representative random sample) may not produce a sufficiently accurate estimate of the uninspected units' overall compliance with habitability and low-income requirements. The preamble further states that the Treasury Department and the IRS intend to consider replacing Rev. Proc. 2016–15 with a requirement that does not permit use of the 20-percent rule for projects with a relatively small number of low-income units. Comments were requested.

One commenter responded that it was not concerned about ending the 20-percent rule for projects with a relatively small number of low-income units, because it is among those Agencies whose State or local rules require them to inspect a minimum number of units that exceeds the minimum numbers in Rev. Proc. 2016–15.

These final regulations remove the rule that allows minimum sample size to be the lesser of 20-percent of the total number of low-income units or the minimum unit sample size set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart. Instead, under these final regulations, Agencies must inspect no fewer units than the number specified for projects of the relevant size as set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart. The Treasury Department and the IRS have determined that the REAC numbers produce a statistically valid sampling of units, which establishes confidence in the compliance monitoring results for projects of varying size. The Treasury Department and the IRS have further determined that the REAC numbers reasonably balance burden on Agencies, tenants, and building owners with the need to adequately monitor habitability and compliance with the low-income housing credit income and gross-rent restrictions. Agencies, however, continue to have discretion to inspect and review more units as they see fit.

II. *Whether the final regulations should retain the all-buildings requirement*

The temporary regulations (§ 1.42–5T(c)(2)(iii)(A)(1) and (2)) require that an Agency physically inspect all buildings in a low-income housing project by the end of the second calendar year following the year the last building in the low-income housing project is placed in service and at least once every 3 years thereafter. However, Rev. Proc. 2016–15 excepts from this all-buildings requirement a project inspection conducted under the REAC protocol. The exception was specifically carved out based on confidence in, and deference to, an inspection done under HUD oversight.

Two commenters recommended that the final regulations also dispense with the all-buildings requirement for Agencies not using the REAC protocol. The final regulations do not adopt this recommendation. The REAC protocol requires that inspectors be specially trained in its use. When an Agency is not using that protocol, it may choose inspectors of diverse expertise to conduct inspections. The quality of these inspections may vary across projects and jurisdictions.

Under the all-buildings rule, if the randomly selected minimum number of low-income units to be inspected fails to include at least one unit in one or more buildings in a project, then an Agency may satisfy the requirement by inspecting some aspect of each omitted building. These aspects might include the building exterior, common area, HVAC system, etc. In the absence of HUD oversight, requiring that all-buildings be inspected serves as a quality control mechanism.

III. *Whether the final regulations should shorten the reasonable-notice time frame*

The temporary regulations require an Agency to select low-income units to inspect and low-income certifications to review in a manner that will not give advance notice that a particular low-income unit (or low-income certifications for a particular low-income unit) will or will not be inspected (or reviewed) for a particular year. The temporary regulations allow an Agency to give an owner reasonable notice that an inspection of the building and low-income units or review of low-income certifications will occur, whether or not an Agency is selecting the same units for inspection and for low-income certification review. The temporary regulations provide that reasonable notice is generally no more than 30 days, but they also provide a very limited extension for certain extraordinary circumstances beyond an Agency's control such as natural disasters and severe weather conditions.

The Treasury Department and the IRS requested comments on whether the same maximum amount of notice is reasonable for physical inspections as for low-income certification review. Additionally, the Treasury Department and the IRS requested comments on whether, for physical inspections, the reasonable-notice time frame should be shortened. For example, under the REAC protocol, an inspector provides a 15-day notice of an upcoming HUD inspection of a project but same-day identification of the units to be inspected. No comments were received.

These final regulations shorten the reasonable notice requirement to a 15-day notice that a project will experience an upcoming physical inspection or review of low-income certification. The Treasury Department and Internal Revenue Service believe that the 15-day notice period gives building owners reasonable notice that a review of low-income certifications will occur and gives building owners and tenants reasonable notice that a project will be inspected and that low-income units will be inspected if they are in the random sample that will later be selected.

The statistical validity of inspecting only a sample of the low-income units in a project depends on the sample being random and representative. Thus, the validity would be destroyed if a project owner had an opportunity to selectively prepare the units in the sample for inspection. Consistent with preserving the validity of the inspection process, an Agency must select the low-income units to inspect in a manner that will not give advance notice that a particular low-income unit will or will not be inspected. Accordingly, the final regulations clarify that an Agency may notify the owner of the particular low-income units for inspection only on the day of inspection. The Treasury Department and IRS note that, under the REAC protocol, HUD or HUD-Certified REAC inspectors randomly select low-income units for inspection on the day of inspection.

IV. *Whether the final regulations should allow an Agency to treat a scattered site or multiple buildings with a common owner and plan of financing as one low-income housing project absent a multiple-building election under section 42(g)(3)(D)*

Section 42(c)(2)(A) defines "qualified low-income building" as any building that is part of a qualified low-income housing project at all times throughout the compliance period. Section 42(g)(1) defines "qualified low-income housing project" as any project for residential rental property if the project meets the requirements of section 42(g)(1)(A), (B), or (C), whichever is elected by the taxpayer. Section 42(g)(7) provides for a scattered site project. Under that provision, buildings that would (but for their lack of proximity) be treated as a project shall be so treated if all of the dwelling units in each of the buildings are rent-restricted residential rental units. Section 42(g)(3)(D) provides that a project contains only one building unless, prior to the end of the first calendar year in the project period (as defined in section 42(h)(1)(F)(ii)), each building to comprise the project is identified in the form and the manner that the Secretary provides. Taxpayers make the multiple-building election on Form 8609 and by attaching a statement identifying each of the buildings in a project subject to the election.

Two commenters recommended that, for purposes of compliance monitoring (including determining how many units to inspect), the final regulations provide special treatment to a scattered site or multiple buildings with a common owner and plan of financing. The recommendation was that compliance monitoring be conducted as if the multiple buildings were part of a single project, even if the owner had not made a multiple-building election under section 42(g)(3)(D). If the low-income units in all of the buildings were treated as potentially representative of each other (as would be the case if the buildings were part of a single project), the size of the sample to be inspected would be lower than the aggregate number of units to be inspected if the buildings are considered separately. Because of this separate treatment, according to these commenters, the process of inspecting a number of small, single-building projects (for example, single family, duplex, or triplex buildings) located throughout a relatively large (possibly rural) geographic area is unnecessarily burdensome. In particular, separate treatment requires at least one unit of each of the building to be inspected. The Treasury Department and the IRS note that the multiple-building election is a statutory requirement. Other than treating these buildings as if such an election had been made, commenters did not suggest criteria according to which units in buildings in different projects could be treated as statistically representative of each other. For that reason, the Treasury Department and the IRS are not adopting this recommendation in the final regulations.

V. *Certification and Review Provisions under § 1.42–5(c)*

One commenter recommended that the regulations clarify that for properties consisting of two or more separate projects, monitoring Agencies may accept one certification form as long as it contains an attachment that identifies all of the projects for which the certification is being made. The Treasury Department and the IRS decline to adopt the comment, because it is beyond the scope of the proposed regulations.

Effect on Other Documents

The temporary regulations authorize the IRS to provide in guidance published in the Internal Revenue Bulletin exceptions from, or alternative means of satisfying, the inspection provisions of § 1.42–5(d). Rev. Proc. 2016–15 was published concurrently with the temporary regulations and provides that the HUD REAC protocol satisfies both § 1.42–5(d) and the physical inspection requirements of the temporary regulations. These final regulations contain the guidance that Agencies need and do not rely on the IRS to provide in the Internal Revenue Bulletin exceptions from, or alternative means of satisfying the inspection provisions of § 1.42–5(d) or these final regulations. Accordingly, Rev. Proc. 2016–15 is obsolete with respect to an Agency as of the date on which the Agency's QAP is amended to reflect these final regulations. In all cases, however, Rev. Proc. 2016–15 is obsolete after December 31, 2020.

Applicability Date

The Department of Treasury and the IRS are aware that additional time may be needed for Agencies' QAPs to be amended. The final regulations allow Agencies a reasonable period of time to amend their QAPs, but QAPs must be amended no later than December 31, 2020.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Therefore, a regulatory impact assessment is not required. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses. No comments were received from the Small Business Administration.

Drafting Information

The principal authors of these regulations are Barbara Campbell and YoungNa Lee, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1–INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.42–5T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.42–0T is amended by removing the entry for § 1.42–5T.

Par. 3. Section 1.42–5 is amended by:

1. Removing paragraph (a)(2)(iii).
2. Revising paragraphs (c)(2)(ii) and (iii).
3. Revising paragraph (c)(3).
4. Revising paragraph (h)(2).
5. Removing paragraph (i).

The revisions and additions read as follows:

§ 1.42–5 Monitoring compliance with low-income housing credit requirements.

* * * * *

(c) * * *

(2) * * *

(ii) Require that, with respect to each low-income housing project, the Agency conduct on-site inspections and review low-income certifications (including in that term the documentation supporting the low-income certifications and the rent records for tenants).

(iii) Require that the on-site inspections that the Agency must conduct satisfy both the requirements of § 1.42–5(d) and the requirements in paragraph (c)(2)(iii)(A) through (D) of this section, and require that the low-income certification review that the Agency must perform satisfies the requirements in paragraphs (c)(2)(iii)(A) through (D) of this section. Paragraph (c)(2)(iii)(A) through (D) of this section provides rules determining how these on-site inspection requirements and how these low-income certification review requirements may be satisfied by an inspection or review, as the case may be, that includes only a sample of the low-income units.

(A) *Timing*. The Agency must conduct on-site inspections of all buildings in the low-income housing project and must review low-income certifications of the low-income housing project–

(*1*) By the end of the second calendar year following the year the last building in the low-income housing project is placed in service; and

(*2*) At least once every 3 years thereafter.

(B) *Number of low-income units*. The Agency must conduct on-site inspections and low-income certification review of not fewer than the minimum number of low-income units for the corresponding number of low-income units in the low-income housing project set forth in the table to paragraph (c)(2)(iii).

Table to Paragraph (c)(2)(iii)

Number of Low-Income Units in the Low-Income Housing Project	Number of Low-income Units Selected for Inspection or for Low-Income Certification Review (Minimum Unit Sample Size)
1	1
2	2
3	3
4	4
5–6	5
7	6
8–9	7
10–11	8
12–13	9
14–16	10
17–18	11
19–21	12
22–25	13
26–29	14
30–34	15
35–40	16
41–47	17
48–56	18
57–67	19
68–81	20
82–101	21
102–130	22
131–175	23
176–257	24
258–449	25
450–1,461	26
1,462–9,999	27

(C) *Selection of low-income units for inspection and low-income certifications for review*–(*1*) *Random selection*. The Agency must select in a random manner the low-income units to be inspected and the units whose low-income certifications are to be reviewed. Agencies generally may not select the same low-income units of a low-income housing project for on-site inspections and low-income certification review, because doing so would usually give prohibited advance notice. See paragraph (c)(2)(iii)(C)(2) of this section. An Agency may choose a different number of units for on-site inspections and for low-income certification review, provided the Agency chooses at least the minimum number of low-income units in each case. The Agency must select the units for inspections or low-income certification review separately and in a random manner.

(*2*) *Advance notification limited to reasonable notice*. The Agency must select the low-income units to inspect and low-income certifications to review in a manner that does not give advance notice that a particular low-income unit (or low-income certifications for a particular low-income unit) will or will not be inspected (or reviewed) for a particular year. The Agency may notify the owner of the low-income units for on-site inspection only on the day of inspection. However, the Agency may give an owner reasonable notice that an inspection of the project and of not-yet-identified low-income units or review of low-income certifications will occur. The notice serves to enable the owner to assemble needed documentation for low-income certifications for review and to notify tenants of the possibility of physical inspection of their units.

(*3*) *Meaning of reasonable notice*. For purposes of paragraph (c)(2)(iii)(C)(*2*) of this section, reasonable notice is generally no more than 15 days. The notice period begins on the date the Agency informs the owner that an on-site inspection of a project and low-income units or low-income certification review will occur. Notice of more than 15 days, however, may be reasonable in extraordinary circumstances that are beyond an Agency's control and that prevent an Agency from carrying out within 15 days an on-site inspection or low-income certification review. Extraordinary circumstances include, but are not limited to, natural disasters and severe weather conditions. In the event of extraordinary circumstances that result in a reasonable-notice period longer than 15 days, an Agency must select the relevant units and conduct the same-day on-site inspection or low-income certification review as soon as practicable.

(*4*) *Alternative means of conducting on-site inspections – Use of the REAC protocol*. An Agency may satisfy the requirements of paragraph (c)(2)(ii) and (iii) of this section if the inspection is performed under the Department of Housing and Urban Development (HUD) Real Estate Assessment Center (REAC) protocol and the inspection satisfies the following requirements:

(*i*) Both vacant and occupied low-income units in a low-income housing project are included in the population of units from which units are selected for inspection;

(*ii*) The inspection complies with the procedural and substantive requirements of the REAC protocol, including the requirements of the most recent REAC Uniform Physical Condition Standards (UPCS) inspection software, or software accepted by HUD;

(*iii*) The inspection is performed by HUD or HUD-Certified REAC inspectors;

(*iv*) The inspection results are sent to HUD, the results are reviewed and scored within HUD's secure system without any involvement of the inspector who conducted the inspection, and HUD makes its inspection report available.

(*5*) *HUD Inspections that comply with the requirements of the REAC Protocol*. If, consistent with the requirements of paragraph (c)(2)(iii)(4) of this section, an Agency conducts on-site inspections under the REAC protocol, then—

(*i*) Paragraph (c)(2)(iii)(A) of this section is applied as if it did not contain the word "all";

(*ii*) The number of low-income units required to be inspected under the REAC protocol satisfies the requirements of paragraph (c)(2)(iii)(B) of this section concerning the number of low-income units an Agency must inspect; and

(*iii*) The manner in which the low-income units are selected for inspection under the REAC protocol satisfies the requirements of paragraph (c)(2)(iii)(C) of this section.

(*6*) *Income Certification Requirements for HUD Inspections that comply with the requirements of the REAC Protocol*. An agency that conducts on-site inspections under the REAC protocol is not excused from reviewing low-income certifications in accordance with paragraphs (c)(2)(ii) and (iii) of this section.

(*7*) *Applicability of reasonable notice limitation when the same units are chosen for inspection and file review*. If the Agency chooses to select the same units for on-site inspections and low-income certification review, the Agency must complete both the inspections and review before the end of the day on which the units are selected. See paragraph (c)(2)(iii)(C)(*1*) and (*2*) of this section.

(D) *Method of low-income certification review*. The Agency may review the low-income certifications wherever the owner maintains or stores the records (either on-site or off-site).

(3) *Frequency and form of certification*. A monitoring procedure must require that the certifications and reviews of § 1.42–5(c)(1) and (c)(2)(i) be made at least annually covering each year of the 15-year compliance period under section 42(i)(1). The certifications must be made under penalties of perjury. A monitoring procedure may require certifications and reviews more frequently than every 12 months, provided that all months within each 12-month period are subject to certification.

* * * * *

(h) * * *

(2) *Applicability dates*. The requirements in paragraphs (c)(2)(ii) and (iii) and (c)(3) of this section apply beginning on February 26, 2019. A state housing credit agency is allowed a reasonable period of time to amend its qualified allocation plan, but must amend its qualified allocation plan no later than December 31, 2020.

* * * * *

§ 1.42–5T [Removed]

Par. 4. Section 1.42–5T is removed.

Kirsten Wielobob,
Deputy Commissioner for Services and Enforcement.

Approved: February 13, 2019.

David J. Kautter,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on February 22, 2019, 4:15 p.m., and published in the issue of the Federal Register for February 26, 2019, 84 F.R. 6076)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

Bulletin 2019–11

Action on Decision:

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

Finding List of Current Actions on Previously Published Items[1]

Bulletin 2019–11

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

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The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.