ID: CCA_2009092109284837

Number: **200945061**
Release Date: 11/6/2009

Office:

UILC: 6227.02-00

From:
Sent: Monday, September 21, 2009 9:28:56 AM
To:
Cc:
Subject: RE:

Attachment: Samuelli 51809.pdf

The amended partnership returns are most likely nullities since they probably do not comply with section 6227 in all respects. A request that does not use a Form 8082, can comply with section 6227 if it meets all the requirements that would be contained in the reg and the Form. These requirements are laid out in Samuelli v. Commissioner (attached). I doubt that these amended returns meet all the criteria. Even if they are considered valid substituted returns under section 6227(c)(1), we still cannot assess any additional resulting tax if the partner objects. See I.R.C. 6230(b)(2)

Accordingly, the only way we can make an unquestionably good valid assessment is to issue an FPAA, or to enter into a closing agreement with the affected partner. A closing agreement would convert the agreed item and remove this item from the TEFRA procedures for the partner who signs the closing agreement. It would not remove other items. In the absence of a closing agreement or FPAA, the government and the taxpayer would both be bound by the original partnership return. See I.R.C. 6222 and Roberts v Commissioner, 94 T.C. 853, 860 (1990).

If we disagree with the original partnership return, we should issue an FPAA to adjust those items. That is the return we would be adjusting - not the amended returns.

What you decide to include in a closing agreement or FPAA is your call.