LITIGATION GUIDELINE MEMORANDUM

September 25, 1998
CC:DOM:FS:P&SI TL-81 (Rev)

UILC: 6501.04-13
6501.04-14
6229.00-00

Number: **199905040**
Release Date: 2/5/1999

TEFRA STATUTE OF LIMITATIONS

This memorandum supersedes LGM TL-81 (Rev. March 7, 1991), updating the discussion of the appropriate statute of limitations governing TEFRA proceedings to take into account recent developments in the case law. Prior to 1982, adjustments to a partnership's items of income, gain, loss, deduction, or credit had to be made in separate proceedings with respect to each partner individually. TEFRA established unified partnership audit rules which require the tax treatment of partnership items to be determined at the partnership level. These rules did not impact the end result of an examination: taxes attributable to partnership items are assessed against the partners, not the entity. Accordingly, this memorandum focuses on the statute of limitations of the partners (I.R.C. § 6501) and the extent to which it is affected by the TEFRA audit and litigation procedures.

I. General Introduction

In 1982, Congress enacted the TEFRA[1] unified audit and litigation procedures to simplify and streamline the partnership audit, litigation, and assessment process.[2] The underlying principle of TEFRA is that "the tax treatment of items of partnership income, loss, deductions, and credits will be determined at the partnership level in a unified partnership proceeding rather than separate proceedings with the partners."[3] Accordingly, the Service may examine the partnership as an entity, rather than conduct a separate examination as to each of the partners.

---

[1]Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248.

[2]The Subchapter S Revision Act of 1982, Pub. L. No. 97-354, created similar unified audit and litigation procedures for S corporations, generally effective for S corporation taxable years beginning after December 31, 1982. However, the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, repealed the unified procedures for S corporation taxable years beginning after December 31, 1996. Accordingly, this LGM limits its reference to partnerships, though it generally applies with equal force to S corporation taxable years beginning after December 31, 1982 and ending on or before December 31, 1996.

[3]Conf. Rep. No. 97-248 at 600 (1982), 1982-2 C.B. 462.

A. Income Taxes are Assessed Against Partners

Despite the creation of a unified procedure for audit and litigation, the manner of tax reporting and assessment is not affected by TEFRA. The Conference Report to TEFRA expressly notes that "[f]or income tax purposes, partnerships are not taxable entities. Instead, a partnership is a conduit, in which the items of partnership income, deduction, and credit are allocated among the partners for inclusion in their respective income tax returns."[4] For example, a partnership files a Form 1065 "U.S. Partnership Return of Income"; however, this form is merely an informational return that sets forth the amounts of partnership items and includes schedules allocating such items among the partners. The enactment of TEFRA merely set forth rules as to the administrative procedures for making adjustments to these items: taxes continue to be assessed against the partners and the partnership continues to be a mere conduit for tax purposes.

B. Partnership Examinations Before TEFRA

Prior to enactment of TEFRA, there was no framework within which to conduct a unified partnership examination; rather, examinations of partnership items were conducted at the partner level. Accordingly, if many partners in the same partnership were examined, the partnership might be the subject of several examinations as to the same taxable year. Because there were multiple examinations, there would be multiple cases involving the same partnership and, it was possible that the examinations might reach different results.

Regarding the statute of limitations, several problems arose in the absence of a unified proceeding. Because a partnership was examined only in conjunction with the examination of a partner's return, the examination of the partnership was frequently concluded several years after the partnership return was filed and at a time when the assessment period of the partner under examination was under voluntary extension. If significant adjustments were identified at the partnership level, the Service would be unable to make adjustments to the tax liability of partners other than the partner under examination, if the statute of limitations governing such other partners had expired.

C. Partnership Examinations After TEFRA

---

[4]Conf. Rep. No. 97-248, at 599 (1982), 1982-2 C.B. 462.

With the enactment of TEFRA, Congress established a unified audit and litigation proceeding through which determinations as to partnership items[5] are required to be made at the partnership level. Section 6221. Partners generally have the right to receive notice of the proceedings and have the right to participate in both the audit and litigation of the partnership items. Sections 6223, 6224. Once partnership determinations become final, the Service generally may assess any adjustments to the tax liabilities of the partners without following deficiency procedures. Section 6230. But, despite the changes to the audit and litigation procedures, income taxes continue to be assessed only against the partners and not the partnership.

To alleviate the statute of limitations issues described above, Congress enacted a minimum assessment period during which assessments could be made to the tax liabilities of all partners for tax attributable to partnership items. Specifically, section 6229 provides:

- a minimum period for assessment based upon the filing of the partnership return;
- rules for the extension by agreement of the minimum period for assessment;
- a minimum period for assessment after the conversion of partnership items to nonpartnership items;
- rules for the suspension of the minimum period of assessment; and
- rules that extend the minimum period for assessment in special circumstances (i.e., fraud, substantial omission, no return, or unidentified partner).

Note that section 6229 sets forth minimum periods for assessment; however, because taxes are only assessed against partners (and not the partnership), the general limitation on assessment found in section 6501 continues to control except to the extent it is extended by section 6229.

II. Limitations On Making Assessments

As noted above, the general limitation on assessment under section 6501 controls the timing of when assessments of tax may be made against a taxpayer, even when that taxpayer is a partner of a partnership. Accordingly, a discussion of limitations on assessment must begin with an analysis of section 6501.

---

[5]A partnership item is "any item required to be taken into account for the partnership's taxable year under any provision of subtitle A to the extent that regulations . . . provide that . . . such item is more appropriately determined at the partnership level than at the partner level." Section 6231(a)(3).

A. In General

Section 6501 sets forth the general limitation on assessment and provides:

> (a) General Rule.--Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not the return was filed on or after the date prescribed) . . . For the purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).[6]

Under this provision, the time within which an assessment must be made is three years from the later of the due date for filing or the actual date of filing of the return. See section 6501(b)(1). For purposes of section 6501 (b)(1), the Return at issue is the Return of a partner or shareholder and not the Return of the flow through entity. The Supreme Court in Bufferd v. Commissioner, 506 U.S. 523 (1993), held "that the limitations period within which the Internal Revenue Service must assess the income tax liability of an S corporation shareholder runs from the date on which the shareholder's return is filed." Id., 506 U.S. at 533. As the court noted, "tax returns that 'lack the data necessary for the computation and assessment of deficiencies' generally should not be regarded as triggering the period of assessment." Id., 506 U.S. at 528 quoting Automobile Club of Mich. v. Commissioner, 353 U.S. 180, 188 (1957). Accordingly, the return of the flow-through entity does not trigger the running of the statute of limitations as to a member (i.e., partner/shareholder).

Although the TEFRA unified audit and litigation procedures for partnerships include a specific provision setting forth a minimum assessment period for adjustments attributable to partnership items, the enactment of TEFRA did not alter prior law. The triggering event for the assessment of tax against a taxpayer continues to be the filing of the taxpayer's return and not the information return of the flow through entity from which the taxpayer received items of gain, loss, deduction or credit.

B. TEFRA Statutes of Limitation

---

[6]The last sentence of this provision was added by section 1284 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34 and "clarifies that the return that starts the running of the statute of limitations for a taxpayer is the return of the taxpayer and not the return of another person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit." Conf. Rep. No 105-220 at 702-703 (1997). Though the Act sets forth a prospective effective date, this provision does not substantively alter the law. See Bufferd v. Commissioner, 506 U.S. 523 (1993).

With the enactment of TEFRA, specific provisions affecting the limitation on assessment were enacted that are unique to TEFRA partnerships. First, the general limitation on assessment was amended by adding section 6501(n)(2),[7] which expressly provides: "For an extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229." Following this cross-reference leads to the minimum assessment period for adjustments attributable to partnership items.

1. General Rule

Section 6229(a) sets forth a minimum period for assessing tax attributable to partnership items, and provides:

> (a) General Rule.--Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before the date which is 3 years after the later of--
>
> (1) the date on which the partnership return for such taxable year was filed, or
>
> (2) the last day for filing such return for such year (determined without regard to extensions).

Simply stated, adjustments attributable to partnership items may be assessed within three years of the later of the date of filing or due date of the partnership return. In essence, section 6229 holds open the section 6501 limitation period as to all partners for a fixed period of time, thereby providing a minimum period within which to assess adjustments attributable to partnership items against all partners.

a. Example - Section 6501 Is Open Longer than the section 6229 Minimum Assessment Period

A partnership return was due and filed on March 15, 1995, and a partner's return was due and filed on April 15, 1995. On occasion, the section 6229 minimum assessment period does not have an impact on the limitation on assessment. In this example, the section 6229 minimum assessment period does not impact the partner's limitation on assessment. The section 6501 limitation on assessment would generally expire on April 15, 1998, which is three years from the due/filing date of the partner's return. The minimum assessment period under section 6229 would have prevented

[7]This provision has been renumbered numerous times since its enactment as part of Pub. L. No. 97-248; however, the language of the provision has remained unchanged.

the statute from expiring before March 15, 1998, which is three years from the due/filing date of the partnership's return. Accordingly, since the section 6501 assessment period remains open without regard to section 6229, assessments attributable to both partnership and nonpartnership items may be made at any time on or before April 15, 1998.

b. Example - I.R.C. § 6229 Minimum Assessment Period Holds Open I.R.C. § 6501

A corporate partner's return was due and filed on March 15, 1995, and the partnership return was filed on April 15, 1995. Unlike in the previous example, section 6229 may have an impact on the assessment period if the section 6229 period remains open beyond the period of limitation on assessment of section 6501. In this example, the section 6229 minimum assessment period extends the partner's limitation on assessment as to partnership items. The section 6501 limitation on assessment would generally expire on March 15, 1998, which is three years from the due/filing date of the corporate partner's return. Under the express language of section 6229, however, "the period for assessing any tax ... which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before" three years from the filing/due date of the partnership return. Accordingly, the minimum assessment period under section 6229 would have prevented the statute from expiring before April 15, 1998, which is three years from the due/filing date of the partnership's return. Accordingly, the section 6229 minimum assessment period holds section 6501 open for assessments attributable to partnership items, while the period for assessing tax attributable to nonpartnership items would have closed three years from the filing of the partner's return.

2. Special Rules

In certain situations, section 6229 provides for a longer period for assessment of tax attributable to partnership items. Those situations include: when any partner has, with the intent to evade tax, signed or participated in the preparation of a return which includes a false or fraudulent item; when the partnership omits in excess of 25 percent of its gross income; when no return has been filed; and when the name, address and taxpayer identification number of a partner are not furnished on the partnership return.

Under section 6229(c)(1), a partner may be assessed at any time for any partnership or affected item, if the partner has, with the intent to evade tax, signed or participated directly or indirectly in the preparation of a partnership return which includes a false or fraudulent item. For all other partners, the minimum period for assessment under section 6229(a) is further extended to six years. In the event that a partnership omits from gross income an amount in excess of 25 percent of the amount

which should have been properly included, section 6229(c)(2) further extends the minimum period for assessment of section 6229(a) to six years as to all partners. If no partnership return is filed, section 6229(c)(3) allows the assessment of partnership or affected items at any time. A return executed on behalf of the partnership by the Secretary under section 6020 is not treated as a return of the partnership. Section 6229(c)(4). Lastly, in the case where a partner was not identified on the partnership return and either a timely notice of final partnership administrative adjustment (FPAA) was mailed to the tax matters partner (TMP) or the partner failed to file a notice of inconsistent treatment, section 6229(e) provides that the assessment period will not expire until one year after the name, address, and taxpayer identification number of such partner is furnished to the Secretary.

a. Example - False Return

Partner A, with the intent to evade tax, assisted in the preparation of the 1992 partnership return, which contained a false item and the return was filed on March 15, 1993. Partner B had no knowledge of the false item. The special rule for a false return may have a different impact on different partners. The limitation on assessment as to Partner B would expire on March 15, 1999 (assuming that the section 6501 limitation period was not otherwise open). Conversely, Partner A's limitation on assessment as to tax attributable to any partnership item would remain open in perpetuity.

b. Example - Individual Non-Filer

A partnership files a timely return for the 1992 taxable year on March 15, 1993, yet a partner of the partnership did not file his individual return. Although section 6229 contains special provisions that further extend the minimum assessment period, these do not supplant the general limitations on assessment. The section 6229(a) minimum period for assessment would hold open the partner's limitation on assessment through March 15, 1996; however, since the partner never filed his individual return, any tax may be assessed against that partner at any time, including tax attributable to partnership items. Section 6501(c)(3).

3. Converted Partnership Items

In certain situations, partnership items are converted to nonpartnership items. See section 6231(b) and (c). The most common situations in which partnership items convert to nonpartnership items are upon settlement and upon bankruptcy of a partner, both of which are addressed separately, below. See section 6231(b)(1)(C) and Temp. Treas. Reg. § 301.6231(c)-7T, respectively. Because section 6229(a) refers to the assessment of tax attributable to partnership items, the conversion of partnership

items to nonpartnership items removes the assessment of tax attributable to such items from the purview of section 6229(a). Section 6229(f) provides:

> (1) Items becoming nonpartnership items.--If, before the expiration of the period otherwise provided in this section for assessing any tax imposed by subtitle A with respect to the partnership items of a partner for the partnership taxable year, such items become nonpartnership items by reason of 1 or more of the events described in subsection (b) of section 6231, the period for assessing any tax imposed by subtitle A which is attributable to such items (or any item affected by such items) shall not expire before the date which is 1 year after the date on which the items become nonpartnership items. The period described in the preceding sentence (including any extension period under this sentence) may be extended with respect to any partner by agreement entered into by the Secretary and such partner.

Pursuant to section 6229(f)(1), the Service has a minimum of one year from the date of the conversion within which to assess tax attributable to the converted items. As the Tax Court noted in Harris v. Commissioner, 99 T.C. 121, 131 (1992):

> Section 6229(f) provides that, if before the period of limitations runs, partnership items become nonpartnership items due to a settlement between the partner and respondent, or for certain other reasons, the running of the limitations period is extended for 1 year. The section 6229 limitations period acts to extend the limitations period otherwise available under section 6501 when such period has otherwise expired. Sec. 6501(o)(2); Woody v. Commissioner, 95 T.C. 193, 205 (1990).

a. Settlements

A settlement agreement converts partnership items to nonpartnership items. Section 6231(b)(1)(C). Once partnership items convert, the Service has a minimum of one year to assess tax attributable to the converted item pursuant to section 6229(f). Although the term "settlement agreement" is not defined in the Code, it is our position that a settlement agreement is defined as a mutual assent as to the treatment of partnership items which has been reduced to writing and is executed by an individual with proper capacity to bind the partner. The TMP has the authority to bind to a settlement direct partners who are not notice partners if the agreement expressly purports to bind such partners. Section 6224(c)(3). Furthermore, an indirect partner is bound by the settlement agreement of a pass-thru partner unless the indirect partner has been identified to the Service. Section 6224(c)(1).

If the Service enters into a settlement agreement with any partner, the partnership items of that partner convert to nonpartnership items as of the date the Service and the partner enter into such agreement (i.e., the date "the Secretary enters into a settlement agreement" under section 6231(b)(1)(C)). For partial settlements entered into after August 5, 1997, the period for assessment of tax attributable to partnership items, including the settled items, is unaffected by the partial settlement. Section 6229(f)(2). For partial settlements entered into prior to August 6, 1997, a question exists as to whether a partial settlement agreement results in a conversion of items for purposes of the section 6229(f) minimum period for assessment of converted items. The position of this office has been that a partial settlement agreement, when reduced to writing and executed by the parties, causes a conversion under section 6231(b) and starts the running of the section 6229(f) minimum period for assessment as to the settled items. See Crnkovich v. United States, 81 AFTR2d ¶ 98-834 (Fed. Cl. June 19, 1998), holding that a settlement agreement causes a conversion of partnership items, even when the settlement is dependent upon the resolution of a pending case.

b. Stipulations of Settled Issues

The position of this office differs with respect to stipulations of settled issues. Because the court may reject a stipulation that is reflected in the proposed form of decision (see T.C. Rule 248(b)(4)), stipulations of settled issues should not be considered final until the court has entered a decision and the appeal period has expired. Under this rationale, if the stipulation of settled issues is considered to be a "settlement agreement" for purposes of section 6231(b)(1)(C), thereby converting partnership items to nonpartnership items, it does not start the section 6229(f) minimum assessment period until the decision of the court becomes final. At that time, the Service has at least one year to assess. Conversely, if the stipulation does not constitute a settlement and the items do not convert, the Service has at least one year from the date the decision becomes final to assess the partnership items under section 6229(d)(2). As long as the assessment is made and any affected item notices of deficiency are issued within these alternative one-year periods, the related assessments are valid.

When stipulations of partnership items are submitted to the court, each stipulation must include the following language, thereby making clear that the stipulation does not cause a conversion under section 6231:

> This stipulation is solely for the purpose of determining the issues which will not be subject to trial but which should be included in any final determination by the Court. It is the understanding of the parties that this stipulation is the resolution of the stated issues within the confines of a tried case. As such, the stipulation is not a "settlement agreement" within

the meaning of sections 6224(c) and 6231(b)(1)(C) which convert the agreed items to nonpartnership items and may require assessment within the one year period for assessing converted items under section 6229(f).

c. Stipulations to be Bound

Similarly, "piggyback" agreements in docketed cases generally do not settle or compromise the matters in dispute. Rather, they prescribe a procedure whereby the disputed matters will be adjudicated. See Adams v. Commissioner, 85 T.C. 359, 369 (1985); Fisher v. Commissioner, T.C. Memo. 1994-434; Satin v. Commissioner, T.C. Memo. 1994-435. Accordingly, a stipulation to be bound by another case would not cause a conversion (if at all) until the decision in the lead case became final. (Note: the Court of Federal Claims appeared to reach an opposite conclusion in Crnkovich v. United States, 81 AFTR2d ¶ 98-834 (Fed. Cl. June 19, 1998); however, the stipulation in that case was drafted in a manner that the court viewed as constituting a settlement agreement. Crnkovich does not change our position regarding stipulations to be bound, but rather reinforces the need for precision when drafting such stipulations.)

d. Bankruptcy

Under the special enforcement provisions of section 6231, upon being named as a debtor in bankruptcy, a partner's partnership items convert to nonpartnership items. Temp. Treas. Reg. § 301.6231(c)-7T. As noted above, section 6229(f) provides that the period for assessing tax with respect to items that become nonpartnership items shall not expire before the date which is one year after the date that the items become nonpartnership items. Therefore, the Service has a minimum of one year from the date a partner is named as a debtor in bankruptcy within which to issue a statutory notice of deficiency to the partner. For a detailed discussion of the bankruptcy issues, see Litigation Guideline Memorandum, TL-73 (Rev.), Effect of Bankruptcy on TEFRA Proceedings.

III. Counter-Arguments and Litigation Hazards

Although a number of cases have addressed the relationship between sections 6501 and 6229 in dicta, as of the date of this LGM, no case has expressly decided that the section 6229 period extends the governing limitations period set forth in section 6501. Although we believe that the litigation hazards are slight, it is possible that a court may hold that these provisions are not interdependent. For example, an argument has been advanced that section 6229 sets forth a separate and exclusive limitation on assessment for partnership items. The following are examples of the rationale used to support this argument.

A. Section 6229(b)(3) Implies that Section 6501 Does Not Control TEFRA Adjustments

The primary argument supporting the view that sections 6229 and 6501 are separate and exclusive limitation periods is found in the language of the statute itself. Specifically, section 6229(b)(3) implies that section 6229 is separate from section 6501 rather than a mere extension of section 6501. Section 6229(b)(3) states:

> Coordination with section 6501(c)(4).--Any agreement under section 6501(c)(4) shall apply with respect to the period described in subsection (a) only if the agreement expressly provides that such agreement applies to tax attributable to partnership items.

There are two possible interpretations of this provision. It is our view that this provision supports the position that section 6229 is an extension of section 6501. Pursuant to section 6501(c)(4), the period for making an assessment may be extended by agreement. Similarly, pursuant to section 6229(b)(1), the minimum period for assessing partnership items may be extended by agreement. The impact of an extension agreement differs depending upon the nature of the extension agreement. An agreement to extend the section 6501 limitation period extends the period for assessing tax, without regard to the source of the adjustments. Conversely, an agreement to extend the section 6229 period extends the section 6501 assessment period only for partnership items. For an extension agreement to be limited to extending the section 6229 minimum assessment period for partnership items, the agreement must expressly state that it is limited to partnership items. Section 6229(b)(3).

The counter view offered by those who maintain that sections 6229 and 6501 are separate limitations periods asserts that section 6229(b)(3) requires a statute extension to expressly refer to partnership items for that extension to apply to partnership items. This analysis maintains that, if section 6229 merely extended the section 6501 period, an extension of section 6501 would automatically extend the period of limitations for partnership items, and a specific reference to partnership items would not be necessary. Thus, inasmuch as section 6229(b)(3) requires an express reference to partnership items for an extension under section 6501(c)(4) to apply to the period under section 6229 supports the conclusion that sections 6229 and 6501 provide separate periods of limitations.

The flaw in this argument is that section 6229(b)(3), by its express terms, only sets forth the requirements for extending section 6229(a). A statute extension executed under section 6229(b) is unique, in that it is limited to partnership items; whereas a general statute extension under section 6501(c)(4) extends the limitation on assessment, generally. Accordingly, for a taxpayer to extend the section 6229(a)

period, it is logical that the extension expressly references partnership items. Such a separate reference is unnecessary if the section 6501 period is open for all items and is extended for all items. Furthermore, an extension under section 6229(b) has another unique characteristic: a TMP may extend the minimum period on behalf of all partners. Consequently, section 6229(b)(3), in effect, requires the TMP to specify that it is the section 6229(a) period that is extended by specifically referencing partnership items. section 6229(b)(3) has no relevance to an individual statute extension because, if the individual partner extends section 6501 period, it is irrelevant whether the minimum period on assessment for partnership items is also extended. Thus, section 6229(b)(3) is not inconsistent with the Service's position.

B. General Framework of TEFRA Requires Section 6229 to be Treated As A Separate Statute of Limitations

Another argument supporting a separate statute approach is that the Service's interpretation may result in different periods of limitations for partners within the same partnership. The fundamental premise of the TEFRA audit procedures is to provide a unified proceeding for all partners; proponents of a separate statute approach argue that a single period of limitations advances that objective. To allow different periods of limitation for different partners would appear to defeat this objective. This argument may be rebutted, however, by noting that Congress specifically allowed for differing periods of limitations in allowing individual partners to extend the section 6229 period with respect to themselves. See section 6229(b)(1)(A). See also section 6229(f) (last sentence). The TEFRA provisions expressly provide that a partner whose limitation on assessment has expired is no longer a party to the TEFRA proceeding. Section 6226(d)(1)(B). If, as the proponents of the separate statute approach contend, the statute of limitations applies uniformly to all partners, then the situation would not arise in which the statute of limitations would expire as to one partner and not the others.

C. Section 6503 Cross-reference Implies Separate Statute

Yet another argument in support of the separate statute approach is derived from section 6503(a), which provides for the suspension of the period of limitations when a statutory notice of deficiency is mailed. Section 6503(a) makes specific reference to the period of limitations provided in section 6229. Those advocating the separate statute approach assert that the reference to section 6229 arguably serves no purpose if section 6229 merely extends section 6501. The argument is that section 6503(a) suspends the period under section 6229(a) for assessing tax attributable to affected items following a partnership proceeding. It also operates to suspend the period under section 6229(f) for partnership and affected items which have converted to nonpartnership items in those situations in which a notice of deficiency is sent with respect to such items. If section 6229 merely operates to

extend section 6501, then an affected item notice of deficiency would extend section 6501, and this provision is unnecessary.

The counter to this argument is that section 6503(a)(1) suspends section 6229 "but only with respect to a deficiency described in section 6230(a)(2)(A)." Section 6230(a)(2)(A) only authorizes notices of deficiency for affected items requiring partner level determinations and partnership items which have converted to nonpartnership items. Thus, the purpose of the additional language was to limit the items to which the suspension of section 6501 applied. More specifically, if the notice was issued during the minimum assessment period of section 6229, and at a time when the general assessment period under section 6501 was also open, section 6503(a) would only suspend section 6501 for converted partnership items or deficiencies attributable to affected items, and not for other non-TEFRA items. This is accomplished by suspending the limitation period only as it is applicable to such deficiencies. Consequently, section 6503(a)(1) is, in fact, consistent with the statute extension approach.

IV Court Opinions

As noted earlier, there are currently no court cases in which the issue of the interplay between sections 6501 and 6229 has been addressed as a dispositive issue; however, several courts have addressed the statute of limitations issue in dicta. The following cases illustrate the approaches taken by various courts. Generally, the Tax Court has, in its more recent cases, acknowledged that section 6229 extends section 6501, though some earlier cases expressed a contrary view. Also, bankruptcy courts have more often cited section 6229 as providing a separate and exclusive limitation on assessment of partnership items.

A. Section 6229 Extends Section 6501

The following cases stand for the proposition that section 6229 extends the limitation period set forth in section 6501. In Crnkovich v. United States, 81 AFTR2d ¶ 98-834 (Fed. Cl. June 19, 1998), the Court of Federal Claims addressed the rationale behind the inclusion of specific statute of limitations language contained in a settlement agreement. In offering alternative reasons for the inclusion of such language, the court noted in a footnote:

> I.R.C. § 6501(a) unambiguously states that the IRS has only three years to make an assessment ("any tax . . . shall be assessed within 3 years"(emphasis added)). On the other hand, the three- and one-year limitations periods in I.R.C. §§ 6229(a) and (f) do not unambiguously define an end date for making an assessment in that they instead use the phrase "shall not expire before." The failure in Section 6229 to define an end date leaves open the possibility

that the applicable limitations period may expire after the periods set forth therein. Under this interpretation, the statute of limitations in Section 6501 would control if it expires after expiration of the three- and one-year periods in Section 6229. Section 6229 would serve only to extend the assessment period under Section 6501. Section 6501(n) suggests that Section 6229 serves as an extension by providing: "For extension of period in the case of partnership items (as defined in Section 6231(a)(3)), see Section 6229."

Recently, in Estate of Quick v. Commissioner, 110 T.C. No. 17 (1998), the Tax Court noted that "[s]ection 6501(a) provides generally that respondent has 3 years from the date the return was filed in which to assess the tax. Section 6501(o) provides a cross-reference to section 6229, which extends such period in the case of adjustments pertaining to partnership items or affected items." The case involved the timeliness of an affected item statutory notice of deficiency. The court continued, noting that the Section 6501 limitation on assessment had, in this case, expired, "unless section 6229(a) and (d) applies to suspend such period." See also, Harris v. Commissioner, 99 T.C. 121 (1992) (applying this rationale to section 6229(f), with regard to converted items); O'Rourke v. Commissioner, T.C. Memo. 1997-152; Wayne Caldwell Escrow Partnership v. Commissioner, T.C. Memo. 1996-401; Manas v. Commissioner, T.C. Memo. 1992-454 (stating that section 6229 "provides for a minimum period"); Williams v. United States, 974 F. Supp. 1206 (C.D. Ill. 1997); and In re Madden, 96-1 USTC ¶ 50,263 (Bankr. N.J. 1986).

B. Section 6229 Is An Independent Limitation on Assessment

The following cases stand for the proposition that section 6229 sets forth a separate and independent statute of limitations. In each of these cases, the court did not address the interplay of sections 6229 and 6501 and referred to the TEFRA provision as an exclusive limitation on assessment. Also, in each of these cases, the distinction between sections 6229 and 6501 was irrelevant to the holding.

In Boyd v. Commissioner, 101 T.C. 365 (1993), the Tax Court expressly stated that "section 6501(a) does not apply to income tax attributable to partnership items." Boyd, 110 T.C. at 370. It should be noted that the court cited for this proposition section 6501(o) (currently renumbered as subsection (n)), which expressly refers to section 6229 for "an extension of period in case of partnership items." Section 6501(n)(2). See also, Cambridge Research and Development Group v. Commissioner, 97 T.C. 287 (1991).

In In re Frary, 117 B.R. 541 (Bankr. Alaska 1990), the bankruptcy court stated that "[s]ection 6229 establishes a period of limitations for making assessments of partnership items. This period of limitations is independent of the limitation period set in 26 U.S.C. § 6501." This statement, in addition to being an erroneous interpretation

of section 6229, was, however, irrelevant to the holding. Other cases that seem to imply that the three year period set forth in section 6229 is a fixed period, rather than an extension of section 6501, include Metals Refining, Ltd. v. Commissioner, T.C. Memo. 1993-115; and Lumenetics v. Commissioner, T.C. Memo. 1992-630.

V. Litigation Guidelines

[redacted]

[redacted]

Coordination with section 6501(c)(4).--Any agreement under section 6501(c)(4) shall apply with respect to the period described in subsection (a) only if the agreement expressly provides that such agreement applies to tax attributable to partnership items.

[redacted]

VI. CONCLUSION:

It is our position that section 6501 is the controlling limitation on assessment, and that to the extent applicable, section 6229 merely serves to extend the section 6501 general limitation on assessment. In effect, the limitation on assessment of tax attributable to partnership items is the longer of

section 6501 or section 6229.[8] Accordingly, to the extent an assessment is timely under either provision, the statute of limitations should not serve as a bar against assessment.

For further assistance or information, please contact the Procedural Branch of the Field Service Division at (202) 622-7940.

DEBORAH A. BUTLER
Assistant Chief Counsel
(Field Service)

[8]Congress made this same observation in the Conference Report to the Taxpayer Relief Act of 1997, in which they expressly noted that "[t]he period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501." Conf. Rep. No. 105-220 at 680 (1997).