



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
March 15, 2001

OFFICE OF
CHIEF COUNSEL

Number: **200125014**
Release Date: 6/22/2001
CC:PA:APJP:BO3/TL-N-7312-00
UILC: 6501.00-00
6229.02-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR ASSOCIATE AREA COUNSEL, AREA 1
LM:FSH:HAR

FROM: Assistant Chief Counsel (Administrative Provisions and
Judicial Practice
CC:PA:APJP

SUBJECT: Agreement to extend statute of limitations for assessment
with regard to consistency adjustment under TEFRA
provisions

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official tax administration duties with respect to the case and the issues discussed in the document require inspection or disclosure of the Field Service Advice.

ISSUE

Whether an agreement between the I.R.S. and the taxpayer to extend the period of time for assessment of any tax includes the extension of time to assess a computational adjustment under section 6222 in the absence of additional language related to the adjustment.

CONCLUSION

An assessable computational adjustment or “true-up” under section 6222 is attributable to a partnership item. Thus, additional language with regard to computational adjustments of partnership should be added to the extension agreement to preclude any argument that the extension does not extend the limitations period for making true-ups.

FACTS

It is not unusual for corporate taxpayers to hold partnership interests in one or more partnerships. For various reasons, the Schedule K-1s (Partner’s Share of Income, Credits, Deductions, etc.) are not available to the taxpayer/partners when they file the required corporate income tax returns (Form 1120). Therefore, when filing the Forms 1120, these taxpayer/partners frequently report their allocable share of partnership income and losses based on “estimates” of what the taxpayer/partner believes will be reflected on the Schedule K-1s issued by the partnerships.

Frequently, these taxpayer/partners do not file a Form 8082 (Notice of Inconsistent Treatment) notifying the I.R.S. that the treatment of certain partnership items on the Forms 1120 are inconsistent with the treatment of those items on the partnership returns. More often than not, the taxpayer/partners bring the inconsistencies to the examiners’ attention during the examination. The inconsistencies generally favor the taxpayer/partners or the government in varying amounts and most often result in relatively minimal net adjustments, labeled “true-ups” by I.R.S. examiners. To the extent the taxpayer/partner’s estimates differ from the amounts reported on the partnership return (Form 1065), the I.R.S. examiners make the computational adjustment or true-up to the Form 1120 to account for the inconsistent treatment. The general practice of the I.R.S. examiner has been to include the true-up in the Revenue Agent’s Report (RAR) and on Form 5701 (Notice of Proposed Adjustment for Coordinated Exam Program), then to assess the computational adjustment as part of any deficiency when the examination is completed, rather than assessing the true-up immediately as allowed by section 6222(c).

LAW AND ANALYSIS

Section 6222(a) provides, in relevant part, that a partner shall, on the partner's return, treat a partnership item in a manner which is consistent with the treatment of the partnership item on the partnership return. Under section 6222(c), if a partnership item is treated inconsistently on the partner's return, the I.R.S. may assess any resulting deficiency without regard to the restriction on an assessment attributable to a partnership item under section 6225.

A computational adjustment is a change in the tax liability of a partner to properly reflect the treatment of a partnership item. Section 6231(a)(6). Thus, a true-up under section 6222(a) is a type of computational adjustment. Section 6230(a)(1) generally provides that deficiency procedures under section 6211 shall not apply to computational adjustments. Because the provisions of sections 6225 and 6211 do not apply, a true-up may be immediately assessed by the I.R.S.

Statute of Limitations

Under TEFRA (Tax Equity and Fiscal Responsibility Act) partnership provisions, a minimum period for assessment applies with regard to the assessment of partnership items, affected items, and converted items. The applicable statute of limitations provision depends upon the nature of the item to be assessed.

Section 6229(a) provides, in relevant part, that the period for assessing any income tax with respect to any person, which is *attributable* to any partnership item (or affected item) for a partnership taxable year, shall not expire before three years from the later of the due date of the partnership return, or the date the partnership return is filed.

In contrast, the general statute of limitations for assessment under section 6501 expires three years after the return is filed. Like section 6501, section 6229 allows for extension of the limitations period by agreement. Section 6229(b).

Section 6231(a)(3), in relevant part, defines a partnership item as any item required to be taken into account for the partnership's taxable year to the extent such item is more appropriately determined at the partnership level than at the partner level. Section 6231(a)(6), in relevant part, defines a computational adjustment as the change in the tax liability of a partner which properly reflects the treatment under TEFRA of a partnership item. Thus, a computational adjustment or true-up is the computation of a tax liability attributable to a partnership item.

This point is further illustrated by section 6222(c) which provides, in relevant part, that the restriction on assessment during a partnership proceeding does not apply to any part of a deficiency attributable to any computational adjustment required to

make the treatment of the items by the partner *consistent with the treatment of the items on the partnership return*. Finally, section 6230(c)(1)(A)(i) allows the partner to challenge a true-up which erroneously computes any adjustment necessary “to make the partnership items on the partner’s return *consistent with the treatment of the partnership items on the partnership return*.” Sections 6222(c) and 6230(c)(1)(A)(i), like section 6231(a)(6), make the partnership return the source of the true-up tax. Thus, the true-up is attributable to partnership items.

For the reasons stated, a true-up is attributable to a partnership item. Therefore, the assessment period for partnership items under section 6229 applies to true-ups.

Please call if you have any further questions.

CURTIS G. WILSON
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(ADMINISTRATIVE PROVISIONS
AND JUDICIAL PRACTICE)
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Attorney/Reviewer
CC:PA:APJP:BO3