



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.19.1

AUGUST 27, 2025

EFFECTIVE DATE

(08-27-2025)

PURPOSE

- (1) This transmits revised IRM 8.19.1, *Procedures and Authorities*.

MATERIAL CHANGES

- (1) Added new IRM section, Program Scope and Objectives, and its related subsections to comply with the Deputy Commissioner of Services and Enforcement and Operations Support memo, dated September 14, 2016, entitled Heightened Awareness, Sensitivity and Understanding of Internal Controls.
- (2) Added Taxpayer Bill of Rights (TBOR) content based on guidance from the Division Counsel/ Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration) to the Related Resources section of the Internal Controls.
- (3) Added the following statement to the Related Resources section of the Internal Controls: "In accordance with IRM 25.30.2.3, Statement of Commitment, Appeals will work collaboratively with the Taxpayer Advocate Service (TAS) to enhance the taxpayer experience. For more information, see IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service."

EFFECT ON OTHER DOCUMENTS

IRM 8.19.1 dated April 19, 2016 is superseded. .

AUDIENCE

All IRS Independent Office of Appeals employees working with TEFRA partnership returns and TEFRA partners.

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Director, Specialized Examination Programs and Referrals

8.19.1

Procedures and Authorities

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8.19.1.1
(08-27-2025)
Program Scope and Objectives

- (1) Purpose: This IRM section describes the statute processes, procedures and authorities for working TEFRA Key and Partner Cases in the IRS Independent Office of Appeals (Appeals).
- (2) Audience: Appeals Technical Employees and Appeals Team Managers that work TEFRA cases.
- (3) Policy Owner: Appeals Technical Guidance is under the Director, Specialized Examination Programs and Referrals.
- (4) Program Owner: Appeals Technical Guidance is the program office responsible for providing technical and Procedural Guidance to Appeals employees for TEFRA issues.
- (5) Contact Information: Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information Page for this IRM.

8.19.1.1.1
(08-27-2025)
Background

- (1) The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) was enacted for partnership-level audit procedures under IRC 6221 through 6234. Under the TEFRA unified proceedings, all administrative and judicial proceedings to determine the correct treatment of partnership items were conducted at the partnership level. TEFRA was in effect for 35 years, until its repeal and replacement by the Bipartisan Budget Act (BBA) of 2015 partnership audit regime which applies to all partnership returns beginning after December 31, 2017.

8.19.1.1.2
(08-27-2025)
Authority

- (1) TEFRA was codified under pre-2018 IRC 6221 through 6234 and provides authority for this IRM.
- (2) Section 1101 of the Bipartisan Budget Act (BBA) of 2015 repealed TEFRA partnership and Electing Large Partnership (ELP) provisions for tax years beginning after December 31, 2017, and replaced it with a new centralized partnership audit regime. The new regime provides for determination, assessment and collection of underpayments at the partnership level unless certain elections are made by the partnership.

8.19.1.1.3
(08-27-2025)
Responsibilities

- (1) The author of this IRM is shown on the Product Catalog Page as the originator.

8.19.1.1.4
(08-27-2025)
Program Reports

- (1) Policy, Planning, Quality, and Analysis (PPQA) provides trend data analyses and detailed summary reports for Appeals.

8.19.1.1.5
(08-27-2025)
Terms and Acronyms

- (1) See IRM 8.1.1-1, Common Terms Used in Appeals, for common terms and definitions used in IRM Part 8. Terms listed in this exhibit are not included in this section.

8.19.1.1.6
(08-27-2025)

Related Resources

- (1) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.
- (2) In accordance with IRM 25.30.2.3, Statement of Commitment, Appeals will work collaboratively with the Taxpayer Advocate Service (TAS) to enhance the taxpayer experience. For more information, see IRM 25.30.2, Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service.

8.19.1.2
(10-01-2013)
Overview

- (1) The Appeals Pass-Through Entity Handbook describes the special considerations that must be taken into account in resolving tax controversies of pass-thru entities.
- (2) This handbook supplements other manual sections to provide special instructions for pass-thru entity cases, including TEFRA partnerships.
- (3) Any comments or suggestions regarding this Handbook should be directed to the Director, Specialty Operations.

Caution: Users are cautioned to seek guidance from the Appeals Technical Specialist(s) for TEFRA if questions arise.

- (4) All guidance concerning the Campus TEFRA Functions (CTFs) is for cases controlled on the Partnership Controlled System (PCS). The CTFs only work with key cases and partners controlled on the PCS.

8.19.1.2.1
(04-19-2016)
Appeals TEFRA Team (ATT)

- (1) In July 2010, Appeals centralized technical services for all TEFRA key cases in the Appeals TEFRA Team (ATT) based in Laguna Niguel, CA. The ATT takes a pro-active role in all TEFRA key cases in Appeals from receipt through closing. The ATT serves as a resource for Appeals employees considering the TEFRA cases and to employees who provide support services on TEFRA cases. An ATT Appeals Officer (ATT AO) serves as a consultant on a TEFRA key case. The ATT Appeals Team Manager (ATT ATM) assigns the case to the ATT AO as a work request, not a direct case assignment.
- (2) Screening of TEFRA key case receipts by ATT is mandatory. All Appeals offices must ensure all TEFRA key cases were routed to and screened by the ATT before assignment to a field ATE. If an ATM or ATE receives a TEFRA key case that the ATT has not screened, ship the case to Laguna Niguel APS with a Form 3210 transmittal directing APS to give the case to the ATT to screen. The ATT ATM will assign a screening work request to an ATT AO. The ATT AO will screen for accuracy and completeness of TEFRA administrative procedures and complete a screening checksheet.
- (3) The following ATT work requests are mandatory:
 - **FPA** preparation oversight and assistance
 - **Agreement package** preparation oversight and assistance
 - **Closing package** preparation oversight and assistance

- (4) To initiate a TEFRA key case work request to ATT, send an email to **AP TEFRA Team* and attach Form 3608-A, *Request For TEFRA Service*, specifying the work requested and statute or other priority.
- (5) ATT AO responsibilities also include:
 - Understanding the statute and the IRM on TEFRA cases (both key cases and partner returns). Keeping current in TEFRA related tax law changes and court decisions.
 - Interacting with and understanding the interrelationship between the two Campus TEFRA Functions (CTF), SB/SE Technical Services and teams, LB&I teams, Associate Area Counsel, and the movement of key cases and partner returns between these functions.
 - Addressing routine TEFRA questions from Appeals employees, serving as a resource for TEFRA concerns, and training employees in TEFRA procedures, as needed.
 - Ensuring that settlements can be administered by the CTFs.
 - Reviewing the work request from field ATE, and then refining Form 3608-A, *Request For TEFRA Service*, with specific preparation instructions to the Tax Computation Specialist (TCS) Manager with TEFRA TCS, if needed.
 - Coordinating, overseeing, and assisting TCS in the preparation of agreement packages, closing packages, and FPAAs.
 - Identifying and reporting problems with the TEFRA program to management and/or the Appeals Technical Specialist(s) for TEFRA.
 - Serving as a team member in special circumstances as determined by the ATT ATM.
- (6) Account and Processing Services (APS) receives and cards TEFRA key cases before sending them (through Laguna Niguel APS) to the ATT ATM to assign a screening work request to an ATT AO. See IRM 8.20.5.36.1, *TEFRA Key Case*, for APS' receipt and carding procedures.
- (7) Laguna Niguel APS closes all TEFRA key cases.
- (8) See the *ATT SharePoint site* for detailed procedures about using the ATT. A link to the site is found on the *Appeals TEFRA website*.

8.19.1.2.2
(10-01-2013)
**Partnership Tax Years
Ending Before August 6,
1997**

- (1) These procedures are written for partnership tax years ending after August 5, 1997. There are some references to the years ending before August 6, 1997 throughout but if you have a partnership whose tax year ends before August 6, 1997, please contact the TEFRA Technical Specialists or the TEFRA AO assigned to your case for guidance.

8.19.1.3
(10-01-2013)
Pass-Thru Entity Defined

- (1) A pass-thru entity is an entity that passes its income, loss, deductions, or credits to its owners. The owners may be partners, shareholders, beneficiaries, or investors. It usually does not have an entity level income tax liability. Pass-thru entities include the following:
 - a. A partnership which has not elected to be classified as a C corporation per Treas. Reg. 301.7701-3 (effective January 1, 1997);
 - b. An S corporation;
 - c. A joint venture;
 - d. A REMIC (real estate mortgage investment conduit);

- e. A limited liability company (LLC) which has more than one member and has not elected to be classified as a corporation under Treas. Reg. 301.7701-3 (effective January 1, 1997);
- f. Any other business entity that is not a trust or corporation and has not elected to be classified as a C corporation.

8.19.1.4
(10-05-2012)
Electing Large Partnerships

- (1) The Taxpayer Relief Act of 1997 created a new class of partnership, the Electing Large Partnership.
- (2) IRC 775 defines an electing large partnership and IRC 771 through IRC 777 provide guidance for the reporting of partnership transactions. The provisions of these sections apply to partnership tax years beginning after December 31, 1997.
- (3) The procedures for making changes to electing large partnerships (either through an examination or through an administrative adjustment request) are described in IRC 6240 through IRC 6255.
- (4) A partnership must have a minimum of 100 partners in the preceding tax year in order to make the election.
- (5) Electing large partnerships use a simplified reporting format. Adjustments are either reported by the partnership in the year the examination results are determined, or the partnership can elect to pay an imputed underpayment.
- (6) The partnership files Form 1065-B, U.S. Return of Income for Electing Large Partnerships.

Note: Because of the unique nature of this entity and the lack of regulations, contact the Appeals Technical Specialist(s) for TEFRA for guidance in processing adjustments for Electing Large Partnerships.

8.19.1.5
(10-01-2013)
Limited Liability Companies

- (1) A limited liability company (LLC) is a legal entity created under state law or under the laws of another country. The entity is separate from its owners. It can own property, incur debts, enter into contracts, and sue or be sued. Owners (called members) are shielded from the entity's liabilities. Limited liability companies can be formed in all 50 states and the District of Columbia.

8.19.1.5.1
(10-01-2013)
Check-the-Box Regulations

- (1) The proliferation of LLCs and the uncertainty of their federal tax classification inspired, in part, a change in the way that organizations are classified.
- (2) Under the old rules, the federal tax classification of an entity was based on the substance of the entity, not the form. If a partnership had more corporate characteristics than partnership characteristics, it was classified as a corporation.
- (3) Effective January 1, 1997, the state law treatment of an entity determines how it is classified (or may elect to be classified) for federal tax purposes. Entities other than "per se" corporations can elect their classifications.

8.19.1.5.2
(10-01-2013)
Determining Classification of Limited Liability Companies

- (1) *Treas. Reg. 301.7701-1* through *Treas. Reg. 301.7701-4* explain the multi-step process for determining classification.
- (2) An organization that is recognized for federal tax purposes as a separate entity is either a trust or a business entity, unless the Internal Revenue Code provides for special treatment for the entity.

- (3) *Treas. Reg. 301.7701-2(b)* lists the business entities that are considered to be corporations.
- (4) Any business entity that is not required to be treated as a corporation is an eligible entity and may choose its classification under the rules of *Treas. Reg. 301.7701-3*.
- (5) An eligible entity with at least two members may elect to be classified as either a partnership or an association taxable as a corporation. If an eligible entity with at least two members does not make an election, the default classification is a partnership.
- (6) An eligible entity with a single owner may elect to be classified as either an association taxable as a corporation or to be disregarded as an entity separate from its owner. If an eligible entity with a single owner does not make an election, the default classification is a disregarded entity.
- (7) As a result of these default rules, most entities will not be required to file an election. An entity that does not want to follow the default classification must file Form 8832, Entity Classification Election.

Note: If a business entity which is not a trust or corporation (including a partnership or an LLC with more than one member) elects to be classified as a corporation under *Treas. Reg. 301.7701-3* (effective January 1, 1997), it may also be eligible to make an S corporation election.

8.19.1.5.3
(10-01-2013)
Disregarded Entities

- (1) A single member LLC can be a disregarded entity. For state law purposes it is a separate entity. For federal income tax purposes it is disregarded as separate from its owner if it has not elected to be classified as an association taxable as a corporation.
- (2) If the owner is an individual, transactions will be reported on the owner's individual income tax return.
- (3) If the owner is an association taxable as a corporation, transactions will be reported as if the entity were a division or branch of the owner.
- (4) There are no special processing instructions for disregarded entities. Examinations of disregarded entities will be done as part of an examination of the owner's return.
- (5) A disregarded entity is considered a viable pass-thru partner for purposes of applying the small partnership exception to the TEFRA rules.

8.19.1.6
(10-01-2013)
TEFRA

- (1) The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) established unified procedures for examining partnerships. The unified procedures provided in IRC 6221 through IRM 6234 apply to partnership tax years that began after September 3, 1982.

Differences Between TEFRA and Non-TEFRA Procedures

TEFRA	Non-TEFRA
The Service is required to notify partners of the beginning and ending of a partnership examination.	There is no requirement to notify the investors that the entity is being examined.
Issues on a partner return are bifurcated. Items related to the TEFRA partnership are processed independently of items that are not part of the TEFRA proceeding.	An investor's case cannot be closed until the examination of the pass-thru entity and any investor items unrelated to the pass-thru entity are complete. If a Statutory Notice of Deficiency is issued, it must include all issues.
The partnership may designate one person (the Tax Matters Partner or TMP) to work with the IRS and communicate with the other partners.	There is no requirement for the entity to designate a person to work with the IRS and communicate with the investors.
The TMP can extend the statute of limitations for all partners.	Statute extensions must be secured from each investor.
A partner agrees to the changes proposed to the partnership return. Special forms have been developed for this purpose. The tax effect on the partner's return is determined after the agreement to the partnership changes is secured.	An investor agrees to allow the assessment of the specific dollar amount of tax attributable to items flowing from the entity.
A partner's agreement to changes in partnership items is final. The partners cannot file a claim for refund.	An investor's agreement to pass-thru entity changes may not be final. The investor may file a claim for refund and petition District Court or the United States Court of Federal Claims.

TEFRA	Non-TEFRA
If agreement cannot be reached, the IRS sends a Notice of Final Partnership Administrative Adjustments to the TMP and the partners. The adjustment does not have to produce a deficiency in order for the Tax Court to gain jurisdiction.	If agreement cannot be reached, the IRS sends a Statutory Notice of Deficiency to the investor. If the adjustments flowing from the entity do not produce a deficiency, the deficiency notice cannot be sent.

Figure 8.19.1-1

8.19.1.6.1
(12-01-2006)
Reference Material

- (1) The following material may be used for information and guidance on TEFRA partnership cases:
 - a. IRM 4.29, Partnership Control System (PCS) Handbook
 - b. IRM 4.31, Pass-Through Entity Handbook
 - c. IRM 35, Chief Counsel Directives Manual – Tax Court Litigation

8.19.1.6.2
(10-01-2013)
TEFRA Inquiry

- (1) When an AO is unable to resolve a TEFRA question after researching all available information (statutes, regulations, court cases, handbooks, etc.), the AO should discuss the issue with the TEFRA AO assigned as a team member.
- (2) If the TEFRA AO is unable to provide an answer, contact the Appeals Technical Specialist(s) for TEFRA.
- (3) The *Appeals TEFRA website* has a list of the *Appeals TEFRA Resource Persons*. The Appeals TEFRA website also has contact information for the Campus TEFRA Functions (CTF).

8.19.1.6.3
(10-01-2013)
Terminology

- (1) Special terms and acronyms are used in this Handbook to describe processing requirements for TEFRA cases. See Exhibit 8.19.1-1. This exhibit contains a glossary of definitions of the most frequently used terms. Refer to the *Appeals TEFRA website* for acronyms commonly used in TEFRA cases.
 - a. The term “TEFRA” will be used interchangeably with the phrase “unified proceeding.”
 - b. The term “partnership” refers to partnerships that are not “small partnerships” excluded from the TEFRA provisions.
- (2) The terms “key case”, “tier”, and “partner” will be used in connection with TEFRA partnerships. Definitions for these terms and additional frequently used terms with regard to TEFRA partnerships are found in Exhibit 8.19.1-1.

8.19.1.7
(10-01-2013)
Overview of TEFRA Unified Audit and Litigation Procedures

- (1) The enactment of the TEFRA Unified Audit and Litigation Procedures created a new concept in the examination of partnership returns. There is an emphasis on the coordination of activities by the Service, the key case partnership, the partners, and the courts.

8.19.1.7.1
(10-01-2013)

**Overview of TEFRA
Unified Audit and
Litigation Procedures
Code Sections**

- (1) IRC 6221: In general, the tax treatment of partnership items is determined at the partnership level.
- (2) IRC 6222: Partners should report their share of partnership items in the same manner as reported on the partnership return or notify the Service of the inconsistency. If notification isn't made, the Service can directly assess the difference without issuing an FPAA.
- (3) IRC 6223: Partners should receive certain notices regarding a partnership examination. This section describes the notices that must be sent, the partners entitled to receive the notice from the Service, the partners that receive their notice from others, and the effect of the Service's failure to provide the notice.
- (4) IRC 6224: All partners have the right to participate in the partnership proceeding. At any time, a partner may waive that right and any restriction on assessment. The Tax Matters Partner (TMP) may sign a settlement agreement for certain non-notice partners. A settlement agreement binds both the Service and the partner, absent a showing of fraud, malfeasance, or misrepresentation of fact. During specified time periods, all partners whose items have not previously converted have the right to the same settlement that the Service has already accepted. A pass-thru partner's settlement binds indirect partners.
- (5) IRC 6225: Assessment and collection can only occur when specifically authorized or after a partnership proceeding is completed.
- (6) IRC 6226: Provisions are made for the judicial review of adjustments proposed by the Service.
- (7) IRC 6227: A partner may request a change to the way an item was originally reported on the partnership return. The procedure is known as an Administrative Adjustment Request (AAR).
- (8) IRC 6228: Provisions are made for the judicial review of adjustments proposed by the partnership but not allowed by the Service.
- (9) IRC 6229: Special periods of limitation for determining corrected partnership items and assessing partner returns are created.
- (10) IRC 6230: Additional administrative provisions are described. These include coordination with deficiency proceedings, mathematical and clerical errors on the partnership return, claims arising from erroneous computations, special rules with respect to credits or refunds attributable to partnership items, and other miscellaneous administrative matters.
- (11) IRC 6231: This section contains definitions and special rules.
- (12) IRC 6233: If an entity that is not a partnership files a partnership return, or if there is no entity, the TEFRA rules will still apply.
- (13) IRC 6234: Oversheltered returns for partnership tax years ending after 8/5/97 may receive a notice of adjustment.

8.19.1.7.2
(10-01-2013)

**Consistent Reporting on
Partner Return**

- (1) IRC 6222 requires each partner to either report partnership items consistently with the partnership return or notify the Service that he is not doing so.

- (2) The notice of inconsistent treatment is made by completing Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR), and filing it with the partner's income tax return. This is a dual purpose form. See IRM 8.19.7 for information on AARs.
- (3) If a partner fails to notify the Service of an inconsistent reporting of partnership items, the Service may generally make a direct assessment to conform the partner's return to that shown on the partnership return.

8.19.1.7.3
(10-01-2013)
**Partnerships Affected by
Unified Proceedings**

- (1) If a partnership is required by IRC 6031(a) to file a partnership tax return, it is subject to the unified proceeding (TEFRA rules), unless the small partnership exception applies. The TEFRA rules affect all partnership tax years that begin after September 3, 1982.
- (2) An entity continues to be subject to the TEFRA rules if it has filed a partnership return, even if it is later determined that it is not a separate entity or it is an entity other than a partnership for that tax year. See IRC 6233 and *Treas. Reg. 301.6233-1*.
- (3) Certain foreign partnerships are required to file a US partnership tax return. *Treas. Reg. 301.6031(a)-1*, which is generally effective for partnership tax years beginning after December 31, 1999, describes the filing requirements for foreign partnerships.

8.19.1.7.3.1
(10-01-2013)
**Small Partnership
Exception**

- (1) Partnerships that qualify as small partnerships are excluded from the TEFRA rules, unless they elect to have the rules apply. The "small partnership exception" was amended effective for partnership tax years ending after August 5, 1997.
- (2) The determination of the applicability of the small partnership exception is critical because of the difference in the examination procedures of TEFRA and non-TEFRA partnerships. To alleviate problems caused when the partnership Schedules K-1 were inaccurate, the Taxpayer Relief Act of 1997 provided that the Service may rely on the partnership return to determine whether a partnership is subject to the TEFRA procedures for partnership tax years ending after August 5, 1997, if such reliance is reasonable. See IRC 6231(g). This provision is primarily applicable in determining the number and type of partners in a partnership. The term "reasonable" is not defined. More than 10 Schedules K-1 does not necessarily indicate that TEFRA applies if there were never more than 10 partners at one time.
- (3) To qualify for the small partnership exception for tax years ending after August 5, 1997, the partnership must meet the conditions below. The determination is made annually.
 - a. No more than ten partners at any time during the tax year (a husband and wife (and their estates) are treated as one partner).
 - b. Each partner is an individual (not a nonresident alien), a C corporation, or an estate of a deceased partner. (See IRM 8.19.1.6.3.1.1 below for more information on C corporation partners.)
 - c. The partnership has not made an election to have the TEFRA rules apply.
- (4) Partnerships that qualify for the small partnership exception may elect to be subject to the unified proceedings. See IRC 6231(a)(1)(B)(ii) and *Treas. Reg.*

301.6231(a)(1)-1(b). An election is valid for the tax year in which the election is made and for all subsequent years of the partnership unless revoked with the consent of the Secretary. The election may be made on Form 8893 (Election of Partnership Level Tax Treatment) and a revocation requested on Form 8894 (Request to Revoke Partnership Level Tax Treatment Election).

Caution: The IDRS Transcript commands BMFOLE and ENMOD have a TEFRA election indicator. Unfortunately, this indicator is not always accurate. The examining agent should be consulted if the TEFRA election indicator is positive but the TEFRA rules have not been followed.

- (5) Exhibit 8.19.1-2 is a flow-chart to assist in the identification of returns that qualify for the small partnership exception.

8.19.1.7.3.1.1
(10-01-2013)
**C Corporation and
Unincorporated Entity
Partners**

- (1) Because C corporation partners no longer prevent a partnership from qualifying for the small partnership exception for tax years ending after August 5, 1997, the Service must make an inquiry as to the filing status of a partner. The Service cannot rely on the name shown on the Schedule K-1 to determine whether the entity is a C corporation.
- (2) If the partner is a corporation, the Service must determine whether the entity has made an S corporation election.
- (3) Unincorporated entities present a different problem because of the “Check-the-Box” regulations. Most partnerships and multi-member LLCs will be taxed as partnerships. But, nothing in the name of the entity will tell an examiner whether an unincorporated business entity is actually a C corporation.

Note: An unincorporated entity that elects to be an association taxable as a corporation and does not make an S corporation election is considered to be a C corporation for purposes of the small partnership exception. A disregarded entity is a pass-thru partner because it is not an individual or a C corporation.

8.19.1.7.3.1.2
(10-01-2013)
**Identifying the Filing
Status of a Partner**

- (1) The Master File Transaction (MFT) Code and the Document Code will identify the filing status of a partner.
- (2) The MFT Code identifies an entity as a partnership (06) or a corporation (02). The fourth and fifth digits of the Document Locator Number (DLN) contain the Document Code for the type of return filed.
- a. If the DLN of a partner’s return has MFT code 02 and Document Code 10 or 11, the partner has generally filed Form 1120.
 - b. If the DLN of a partner’s return has MFT Code 02 and Document Code 16, the partner has generally filed Form 1120S.
- (3) Exhibit 8.19.1-3 is an example and explanation of the DLN.

8.19.1.7.4
(02-10-2009)
**S Corporations Affected
by Unified Proceedings**

- (1) The Subchapter S Revision Act of 1982 added IRC 6241 through IRC 6245. These sections made the partnership unified procedures apply to S corporations except to the extent modified by regulations.

- (2) The TEFRA rules applied to S corporations during the 14 year period which started with S corporation tax years beginning after December 31, 1982. The TEFRA rules do not apply to any S corporations for tax years beginning after December 31, 1996.
- (3) The Small Business Job Protection Act of 1996 repealed IRC 6241 through IRC 6245 for S corporation tax years beginning after December 31, 1996.

8.19.1.7.5
(12-01-2006)
**Tax Matters Partner
(TMP)**

- (1) Under the TEFRA unified proceedings, a statutory representative acts as the liaison between the partners, the Service, and the courts. That person is referred to as the Tax Matters Partner (TMP) in the case of a TEFRA partnership .
- (2) The TMP plays a pivotal role in any partnership proceeding for a specific tax year.

8.19.1.7.5.1
(10-01-2013)
**Duties and
Responsibilities of the
TMP**

- (1) The TMP works with the Service and the courts during a unified proceeding. Failure of the TMP to fulfill responsibilities regarding notices or other acts does not affect the applicability of the proceeding or adjustment to any partner. See IRC 6230(f).
- (2) These are the duties performed by the TMP.
 - a. Furnishes to the Service the name, address, profits interest, and taxpayer identification number of each partner during the tax year for which a Notice of Beginning of Administrative Proceeding (NBAP) is issued and provides revisions and additional information as may be necessary. See IRC 6230(e).
 - b. Sets the time and place for meetings with the Service regarding partnership matters. See *Treas. Reg. 301.6224(a)-1*.
 - c. Executes a consent which extends the statute of limitations on the income tax returns of all of the partners. See IRC 6229(b).
 - d. Binds non-notice partners to any settlement negotiated with the commissioner by stating the intention to bind non-notice partners in the executed agreement form, unless a non-notice partner has filed a statement in accordance with *Treas. Reg. 301.6224(c)-1(c)*. See IRM 8.19.11.2 for language to be included on the settlement agreement.
 - e. Chooses the forum in which the partnership adjustments will be litigated by petitioning the Tax Court, U. S. Court of Federal Claims, or a U. S. District Court within the first 90 days after the Final Partnership Administrative Adjustment (FPAA) is mailed. See IRC 6226(a).
 - f. Intervenes in a court action brought by a partner other than the TMP. See IRC 6226(b)(6).
 - g. Executes a stipulated decision under Tax Court Rule 248(a) that binds all parties to the action in a judicial proceeding before the Tax Court. See Tax Court Rule 248(a).
 - h. Files an Administrative Adjustment Request (AAR) on behalf of the partnership and petitions the Tax Court, a U. S. District Court, or the U. S. Court of Federal Claims if the AAR is not allowed in whole or in part. See IRC 6227(c) and IRC 6228(a)(1).
 - i. Executes a consent which extends the time for filing suit with regard to an AAR. See IRC 6228(a)(2)(D).
- (3) The TMP, if he is a general partner of a pass-thru partner which is a TEFRA partnership, has the following additional duties:

- a. Binds unidentified indirect partners to any settlement agreement negotiated with the Commissioner. See *Treas. Reg. 301.6224(c)-2*.
 - b. Forwards a copy of any notice or other information received regarding the partnership proceeding to the person(s) holding an interest through the pass-thru partner within 30 days of receipt. See *Treas. Reg. 301.6223(h)-1*.
- (4) The Tax Court sets out certain additional TMP responsibilities on cases in its jurisdiction.
 - a. Notifies partners of the filing of a petition by the TMP within 5 days of receiving the Notification of Receipt of Petition from the Court. Tax Court Rule 241(f)(1) sets out the items to be included in the notice.
 - b. Provides partners a copy of the petition filed by the TMP or any other partner within 10 days of the receipt of a request from a partner. See Tax Court Rule 241(g).
 - c. Provides all partners (except participating partners) with copies of the Commissioner's motion for entry of decision, the proposed decision, the certificate of date of filing, and a copy of Tax Court Rule 248 within 3 days of receipt of the Commissioner's certificate of service. See Tax Court Rule 248(b)(3).
 - d. Provides all parties to the action with a copy of the statement from the Service disclosing a settlement agreement within 7 days of receipt of the statement from the Commissioner. See Tax Court Rule 248(c)(2).
- (5) The TMP works with the partners during a unified proceeding.
 - a. The TMP must provide all non-notice partners (other than indirect partners) with copies of any official IRS notice. The Notice of Beginning of Administrative Proceeding (NBAP) must be furnished to non-notice partners within 75 days of the date it was mailed by the Service. The Final Partnership Administrative Adjustment (FPAA) must be furnished to such partners within 60 days of the date it was mailed by the Service. See *Treas. Reg. 301.6223(g)-1(a)(1)* for NBAP, *Treas. Reg. 301.6223(g)-1(a)(2)* for FPAA, and *Treas. Reg. 301.6223(g)-1(a)(3)* for exceptions.
 - b. The TMP is required to keep partners informed of all administrative and judicial proceedings relating to the adjustments at the partnership level of partnership items (IRC 6223(g)).
 - c. The partners that the TMP must keep informed include all notice partners, notice group representatives, and all other partners (except those listed in *Treas. Reg. 301.6223(g)-1*) within 30 days of taking the action or receiving the information with respect to the matter.
- (6) The information that the TMP should furnish to partners is described in *Treas. Reg. 301.6223(g)-1(b)*.
 - a. Closing conference with the examining agent.
 - b. Proposed adjustments, appeal rights, and requirements for filing the protest.
 - c. Time and place of any appeals conference.
 - d. Acceptance by the Service of any settlement offer.
 - e. Consent to the extension of the period of limitations with respect to all partners.
 - f. Filing of an Administrative Adjustment Request (AAR) on behalf of the partnership.

- g. Filing of a petition for judicial review of an FPAA or AAR filed on behalf of the partnership.
- h. Filing of any appeal to any judicial determination of an FPAA or AAR filed on behalf of the partnership.
- i. Final judicial redetermination.

(7) The TMP does NOT have to inform the following:

- a. Partners whose partnership items became nonpartnership items before 30 days after taking the action or receiving the information.
- b. Any indirect partners who have not been identified to the TMP at least 30 days before the TMP is required to provide the information.
- c. Any spouse (other than one who is separately listed or has a separate interest in the partnership) who filed a joint return with a partner who received the notice/information.
- d. Members of a notice group which receive the notice on his/her behalf.
- e. Partners who have received the information from another person.

8.19.1.7.5.2
(10-01-2013)
**Appointing an
Attorney-in-Fact**

- (1) The TMP may appoint an attorney-in-fact by use of Form 2848 (Power of Attorney and Declaration of Representative).
- (2) The following suggestions are recommended for completing Form 2848:
 - a. The TMP should execute the form noting his status as the TMP.
 - b. The name and address of the partnership should be clearly set forth.
 - c. Section 3, Matters, under the heading, "Description of Matter," insert "TEFRA partnership proceedings."
 - d. Section 3, Matters, under the heading, "Tax Form Number," insert "1065."
- (3) It is recommended that the TMP, not a representative, sign legally significant documents, such as consents on behalf of the partnership. See *Treas. Reg. 301.6229(b)-1* for conditions under which a consent may be signed by a person other than the TMP. Also see IRM 8.19.2.16.
- (4) The TMP may not be able to delegate to a representative the authority to bind non-notice partners to a settlement agreement under IRC 6224, or, under certain circumstances, to bind all partners to a stipulated decision under Tax Court Rule 248.
- (5) See *Treas. Reg. 301.6223(c)-1(e)* and IRM 8.19.6.5 for instructions regarding power of attorney designations by a partner.

8.19.1.7.5.3
(10-01-2013)
**Designation of
Partnership TMP**

- (1) The rules for the designation of the TMP of a partnership are set forth in *Treas. Reg. 301.6231(a)(7)-1*.
- Caution:** If a petition has been filed with the Tax Court, only the court may appoint or remove the TMP (Tax Court Rule 250).
- (2) A partnership may designate a general partner, but not a limited partner, as its TMP.
- (3) If the partnership does not designate a TMP or if the prior designation of the TMP has been terminated without subsequent designation, the TMP will be determined according to *Treas. Reg. 301.6231(a)(7)-1(m)* (largest profits interest rule) or selected by the Commissioner pursuant to Treasury Reg. 301.6231(a)(7)-1(n) (selection where largest profits interest rule is impractic-

cable). See IRM 8.19.1.6.5.3.5 for discussion of largest profits interest rule. See IRM 8.19.1.6.5.3.6 for discussion of selection by the Commissioner where the largest profits interest rule is impracticable.

- (4) The TMP must be determined for each tax year.

8.19.1.7.5.3.1
(10-01-2013)

TMP - Limited Liability Company (LLC)

- (1) *Treas. Reg. 301.6231(a)(7)-1* must be adapted for a LLC classified as a partnership because the LLC has members, not general or limited partners.
- (2) *Treas. Reg. 301.6231(a)(7)-2* treats member managers of an LLC as general partners solely for the purpose of the designation or selection of a TMP. For purposes of this section only:
- A member-manager means a member of the LLC who, alone or with others, is vested with the continuing exclusive authority to make the management decisions necessary to conduct the business for which the LLC was formed.
 - If no member-managers have this authority, each member is treated as a member-manager (general partner).

8.19.1.7.5.3.2
(10-01-2013)

Who May Be a Partnership TMP

- (1) The person or entity that is allowed to be the TMP depends on whether the partnership designates its TMP.
- (2) If the partnership makes a designation, the person/entity eligible to become the TMP is either:
- a general partner in the partnership at some time during the tax year for which the designation is made, or
 - a general partner in the partnership at the time the designation is made.

Note: Commissioner consent is required to designate a non-US person as TMP, unless there is no eligible US person.

- (3) If the partnership does NOT make a designation, the person/entity eligible under *Treas. Reg. 301.6231(a)(7)-1(m)* (largest profits interest rule) must be a general partner at the close of the tax year. See IRM 8.19.1.6.5.3.5 for discussion of largest profits interest rule.

Caution: A general partner whose designation as TMP was terminated as a result of its filing for bankruptcy cannot be reselected as TMP under the largest profits interest rule.

- (4) If the partnership does NOT make a designation and it is impracticable to apply the largest profits interest rule, the eligible person/entity may be selected by the Commissioner under *Treas. Reg. 301.6231(a)(7)-1(n)*. A TMP selected by the Commissioner may be ANY partner during the tax year, including a limited partner or an indirect partner. Only the Service may select a limited partner or an indirect partner to be TMP. See IRM 8.19.1.6.5.3.6 for discussion of selection where largest profits interest rule is impracticable.

8.19.1.7.5.3.3
(10-01-2013)

Methods of Partnership Designation of TMP

- (1) When the partnership return is filed, it may designate a TMP in accordance with the instructions on the form.

- (2) A properly selected TMP may designate a successor by filing certification of the successor with the Campus with which the partnership return is filed. *Treas. Reg. 301.6231(a)(7)-1(d)* describes the information to be included in the certification.
- (3) The general partners with over 50 percent of the aggregate interests in partnership profits held by all general partners as of the close of the tax year may designate the TMP by filing a statement with the Campus with which the partnership return was filed. *Treas. Reg. 301.6231(a)(7)-1(e)* describes the information to be included in the statement. For purposes of the designation, all limited partnership interests held by general partners are included in determining the aggregate interests held by all general partners.
- (4) Under limited circumstances all partners (including limited partners) with over 50 percent of the aggregate interest in partnership profits held by the partners as of the close of the tax year may designate the TMP by filing a statement with the Campus with which the partnership return was filed. *Treas. Reg. 301.6231(a)(7)-1(f)* describes the information to be included in the statement. This method may only be used if each general partner meets at least one of the following four circumstances:
 - a. The general partner is dead, or if the general partner is an entity, it has been liquidated or dissolved, or
 - b. The general partner has been adjudicated incompetent, or
 - c. The general partner's partnership items have become nonpartnership items under IRC 6231(b), or
 - d. The general partner is no longer a partner in the partnership.

Caution: This provision does not permit the designation of a limited partner as TMP.

8.19.1.7.5.3.4
(10-01-2013)
**Termination of TMP
Designated by
Partnership**

- (1) The designation of the TMP is terminated under the following conditions (*Treas. Reg. 301.6231(a)(7)-1(l)*):
 - a. The TMP dies
 - b. The TMP is declared legally incompetent
 - c. The TMP is liquidated or dissolved (if it is an entity)
 - d. The TMP's partnership items become nonpartnership items under IRC 6231(c) (relating to special enforcement areas - including bankruptcy). See Note below.
 - e. A new TMP is designated by the partnership.
 - f. The TMP resigns.
 - g. A TMP designation by the partnership is revoked.

Note: Regarding IRM 8.19.1.6.5.3.4 (1)d, see IRC 6231(c) and *Treas. Reg. 301.6231(c)-4*, 301.6231(c)-5, 301.6231(c)-6, 301.6231(c)-7, and 301.6231(c)-8 for a description of the special enforcement areas and the timing of a conversion.

Also see *Transpac Drilling Venture 1982-12 v. Commissioner*, 147 F.3d 221 (2nd Cir. 1998). The court determined that a TMP under investigation for income tax crimes had a conflict of interest that automatically disqualified him from acting as the tax matters partner, even though the government had not sent the letter required by Temp. *Treas. Reg. 301.6231(c)-5T*.

A different conclusion was reached in *Phillips v. Commissioner*, 114 TC 115 (2000), aff'd 9th Cir. 2002, 272 F.3d 1172. The court determined that Treas. Reg. 301.6231(c)-5 was a valid regulation. The court found that the criminal investigation did not create a disabling conflict of interest that would require the Service to notify the TMP that his partnership items would be treated as nonpartnership items. See also *Martinez*, 564 F.3d 719, 752 (5th Cir. 2009).

8.19.1.7.5.3.5
(10-01-2013)
Largest Profits Interest Rule

- (1) If the partnership does not designate a TMP for a particular tax year, or a prior partnership designation has been terminated without the designation of a new TMP, the largest profits interest rule of *Treas. Reg. 301.6231(a)(7)-1(m)* may apply.
- (2) Under this rule, the TMP is the general partner with the largest profits interest in the partnership at the close of the tax year. If more than one general partner has the largest profits interest, then the TMP is the general partner whose name appears first alphabetically.

Caution: The general partner determined under the largest profits rule cannot resign, and the partnership cannot revoke the designation. All other termination actions will apply. See IRM 8.19.1.6.5.3.4, Termination of TMP Designated by Partnership.

- (3) General partners whose previous designation as TMP was terminated will be treated as if they had no profits interest in the partnership for a tax year.

8.19.1.7.5.3.6
(10-01-2013)
Selection by the Commissioner - Largest Profits Interest Rule Impracticable

- (1) The Commissioner (Service) may select a partner, including a limited or indirect partner, to be the TMP if the partnership does not designate a TMP (or the TMP is terminated, and the partnership does not make a new designation), and the Service determines it is impracticable to apply the largest profits interest rule. See *Treas. Reg. 301.6231(a)(7)-1(n) through (r)*. The regulation incorporates the procedures first published in Rev. Proc. 88-16, 1988-1 CB 691.
- (2) Before a TMP is selected, the following notification requirements must be followed:
 - a. Thirty days before selection, the Service will notify the partnership (or LLC) by mail that the largest profits interest rule is impracticable and the Service will select a TMP unless the partnership makes a proper designation. See *Treas. Reg. 301.6231(a)(7)-1(r)(2)*. Letter 2700 (Designation of Tax Matters Partner Request) with Form 13798 (Tax Matters Partner (TMP) Designation Form) may be used to request that the partnership designate a new TMP. Similarly, Letter 2700-L (Designation of Tax Matters Partner Request-LLC) and related Form 13798-L (Tax Matters Partner (TMP) Designation Form-LLC) may be used to request that an LLC designate a new TMP. A duplicate original copy of the designation form should be filed by the partner at the Campus where they filed their return in accordance with the Regulations.
 - b. If the partnership does not designate a TMP, the Service makes the selection and notifies the partner selected, the partnership, and all notice partners. Letter 3205, Notice of Change in Tax Matters Partner, is used to notify the partner selected, the partnership, and all notice partners of the TMP selected. For cases in Appeals, Delegation Order No. 4-19, IRM

1.2.43.17, delegates the authority to select a TMP to appeals team managers and to appeals team case leaders as to their respective cases.

- (3) The circumstances under which the Service would consider it “impracticable” to apply the largest profits interest rule are found in Treas. Reg. 301.6231(a)(7)-1(o). Merely being difficult does not rise to the level of “impracticable.”
- (4) The partnership may not revoke the selection of the TMP by the Service. The partnership may, however, designate a new TMP after the Service has made its selection. The new designation by the partnership must follow Treas. Reg. 301.6231(a)(7)-1(a) through (f). The Service is not required to give effect to the designation until 30 days after the statement is filed. See Treas. Reg. 301.6231(a)(7)-1(r)(2)(iii).
- (5) The TMP may be an entity, such as a partnership or a corporation. Carefully select the person authorized to act for the tier entity.
- (6) Exhibit 8.19.1–6 provides more information and examples of signature elements for a tier entity that is the TMP.

8.19.1.7.6
(12-01-2006)
**Statute of Limitations for
TEFRA Partnerships**

- (1) The enactment of the TEFRA partnership rules resulted in a new code section relating to the statute of limitations for partners in TEFRA partnerships. IRC 6229 provides a minimum period for assessment of any deficiencies resulting from partnership items.

8.19.1.7.6.1
(10-01-2013)
**Comparison of TEFRA
and Non-TEFRA Statutes**

- (1) Partnerships are not taxable entities. Assessments are made at the partner level. Before the TEFRA unified proceedings were enacted, it was necessary to secure statute extensions for each partner. This created a heavy administrative burden for the Service, especially for returns that had more than ten partners or had pass-thru partners.
- (2) The TEFRA unified proceedings did not alter the principle that the assessments were made at the partner level. It created a means to reduce the administrative burden caused by the need for individual statute extensions. IRC 6229 allows for a single extension to be secured from the TEFRA partnership TMP. In contrast, a statute extension must still be secured from each investor in a non-TEFRA key case.

8.19.1.7.6.2
(10-01-2013)
Role of IRC 6229

- (1) The general assessment provisions of IRC 6501 continue to control the statute of limitations for partners. IRC 6229 enhances the IRC 6501 statute by setting forth a minimum period during which no partners' IRC 6501 period will expire with respect to partnership items or affected items. IRC 6229 provides:
 - a. A minimum period for assessment based upon the filing of the key case return;
 - b. Rules for the extension by agreement of the minimum period for assessment;
 - c. A minimum period for assessment after the conversion of partnership items to nonpartnership items;
 - d. Rules for the suspension of the period of assessment; and
 - e. Rules that extend the minimum period for assessment in special circumstances (i.e., fraud, substantial omission, no return, or unidentified partner).

- (2) The IRC 6229 statute should be used as if it were the only statute. This fosters protection against expired statutes. If the IRC 6229(a) statute has expired with respect to partnership items, but the IRC 6501 period remains open for one or more partners, contact associate area counsel to determine whether the proceeding may continue.

Caution: IRC 6229(b)(3) requires that any agreement to extend the statute under IRC 6501(c)(4) must expressly provide that the agreement applies to tax attributable to partnership items. The Service should rely on the IRC 6501 statute only when the partner return is in its original unextended statute period, unless the extension includes special language specifically including the adjustments flowing through from TEFRA partnerships. Form 872 (Rev. 10-2009 and later) and Form 872-A (Rev. 10-2009 and later) contain the special language.

Note: The TEFRA unified procedures must still be followed if the statute is open under IRC 6501 but not under IRC 6229. For example, a Notice of Beginning of Administrative Proceeding (NBAP) must be issued, and a Notice of Final Partnership Administrative Adjustment (FPAA) will be issued if the partners do not enter into settlement agreements.

8.19.1.7.6.3
(10-01-2013)
**Responsibility for
Statute**

- (1) The AO is responsible for controlling the statutory period of limitations at the TEFRA partnership level.
- (2) The person with possession of the partner's return is responsible for protecting the statutory period of limitations for non-TEFRA assessments on the partner's return. The Campus TEFRA Function (CTF) is generally responsible for the statutory period of limitations for TEFRA assessments on the partner's return, except for CIC corporations, Joint Committee, and other corporate specialty cases. See IRM 8.19.6.2, Partner Case Responsibility and IRM 8.19.6.5, Partner Case Statutes.
- (3) The person with possession of the partner's return in CIC corporations, Joint Committee, and other corporate specialty cases is responsible for protecting the assessments related to the TEFRA adjustments after TEFRA partnership issues are resolved. See IRM 8.19.6.2 for an explanation of other corporate specialty cases.

8.19.1.7.6.4
(02-10-2009)
**IRC 6229(a) Statutory
Period of Limitations -
TEFRA Partnership Key
Case**

- (1) In general, the statutory period of limitations under IRC 6229(a) for assessment of tax attributable to partnership and affected items is three years after the later of:
- a. The due date of the return (without regard to extensions), or
 - b. The date the partnership's tax return is filed.
- (2) The due date of a partnership return is $3\frac{1}{2}$ months after the end of the tax year. The due date for filing a return for a calendar year partnership is April 15.

8.19.1.7.6.4.1
(10-01-2013)
**Exceptions to General
Rule in IRC 6229(a)**

- (1) IRC 6229 provides for an extended statute in special circumstances.
- a. IRC 6229(c)(2) extends the statutory period of limitations for assessments from 3 years to 6 years if the TEFRA partnership omits from gross income more than 25 percent of the amount that should have been reported. IRC 6229(c)(2) also applies when the taxpayer omits from

gross income assets for which information is required to be reported under IRC 6038D and the amount exceeds \$5,000. See IRC 6501(e)(1)(A).

- b. If no partnership return is filed, the tax attributable to that year's partnership items may be assessed against the partners at any time pursuant to IRC 6229(c)(3).
- c. If the Service files a substitute for return for the partnership under IRC 6020(b), it is treated as if no return was filed pursuant to IRC 6229(c)(4).

(2) In case of fraud, IRC 6229(c)(1) sets out two different statutes.

- a. If any partner has, with the intent to evade tax, signed or participated directly or indirectly in the preparation of a TEFRA partnership return that includes a false or fraudulent item, any assessment for partnership items may be made at any time with respect to that partner .
- b. In the case of all other partners in that partnership, the statutory period of limitations will be 6 years instead of the normal 3 years.

8.19.1.7.6.5
(10-01-2013)
Unidentified Partner

- (1) An unidentified partner is a partner whose name, address, and taxpayer identification number are not furnished on the partnership return. The partner can be identified by following the procedure described in *Treas. Reg. 301.6223(c)-1(b)*.

Example: Gardenia Associates has 3 partners. One of its partners is Begonia Partners. The Gardenia Associates return gives the name and address of Begonia Partners but does not provide information regarding the tier's partners. Even if the partner information is included on the partnership return of Begonia Partners, they are considered unidentified partners unless they follow the procedure described in *Treas. Reg. 301.6223(c)-1(b)*.

- (2) Under certain conditions, the statute of limitations to assess an unidentified partner remains open until one year after the date the Service is furnished the partner's name, address, and taxpayer identification number. This provision applies if a timely FPAA was issued, or if the partner filed inconsistently with the partnership return and failed to file a notice of inconsistent treatment. See IRC 6229(e).

8.19.1.7.6.6
(10-01-2013)
**Partnership Items
Converted to
Nonpartnership Items**

- (1) In certain situations, partnership items are converted to nonpartnership items. IRC 6231(b) and IRC 6231(c) describe the circumstances that cause the conversion. The conversion removes the assessment of tax attributable to partnership items from the purview of IRC 6229(a) (See IRM 8.19.1.6.6.4, IRC 6229(a) Statutory Period of Limitations - TEFRA Partnership Key Case).
- (2) Under IRC 6231(b), partnership items are converted to nonpartnership items as of the date of the following events:
- a. The Secretary mails the partner a notice that such items shall be treated as nonpartnership items (limited to situations specified);
 - b. The partner files suit under IRC 6228(b) after the Secretary fails to allow an AAR (Administrative Adjustment Request);
 - c. The Secretary or the Attorney General enters into a settlement agreement with the partner;

- d. The partner elects to have his items convert when the Secretary fails to provide proper notice under IRC 6223(e), or the items automatically convert under certain circumstances, based on the failure to provide notice;
- e. Special enforcement actions are taken under IRC 6231(c).

Note: Under Delegation Order 4-19, IRM 1.2.43.17, the Appeals Director, Specialty Operations and Appeals Directors, Field Operations are authorized to mail the notice to convert partnership items to nonpartnership items. Such notices are authorized only as provided by IRC 6231(b)(2) (inconsistent filing and AAR's) and from criminal cases under *Treas. Reg. 301.6231(c)-5*.

- (3) The special enforcement actions under IRC 6231(c) are termination and jeopardy assessments, issuing a conversion notice based on criminal investigation of income tax law violations, indirect method of proof of income, bankruptcy or receivership, and a request for prompt assessment. The time of conversion for special enforcement actions depends on the reason the items are converted. *Treas. Reg. 301.6231(c)-4* through *Treas. Reg. 301.6231(c)-8*.

Time for Conversion of Special Enforcement Actions

In the case of...	The conversion takes place...
Termination and jeopardy assessments,	At the moment before the assessment is made. <i>Treas. Reg. 301.6231(c)-4</i>
A criminal investigation of income tax law violations,	On the date that the partner is notified of the criminal investigation and is sent written notification that the partnership items are treated as nonpartnership items. <i>Treas. Reg. 301.6231(c)-5</i>
The use of an indirect method of proof of income,	On the date that the deficiency notice is mailed to the partner. <i>Treas. Reg. 301.6231(c)-6</i>
Bankruptcy or receivership,	On the date that the bankruptcy petition is filed or the receiver is appointed. <i>Treas. Reg. 301.6231(c)-7</i>
A request for prompt assessment,	On the date that the request is filed. <i>Treas. Reg. 301.6231(c)-8</i>

Figure 8.19.1-2

- (4) The statute of limitations on converted partnership items is governed by IRC 6229(f).
 - a. The period for assessing any tax attributable to partnership items or any affected items will not expire before one year from the date of the conversion. This statute may be extended. See IRC 6229(f)(1).
 - b. For partial settlements executed after August 5, 1997, the period for assessment shall be determined as if the agreement had not been entered into. See IRC 6229(f)(2).

Caution: Regarding 4(a) above, a defaulted FPAA or a court decision does not convert partnership items to nonpartnership items. The statute on the partner return is governed by IRC 6229(d).

8.19.1.7.6.7
(12-01-2006)
**Suspension of the
Statute by FPAA**

- (1) The statutory period of limitations for assessments of tax attributable to partnership items is suspended when the Secretary mails an FPAA to the TMP. IRC 6229(d). The statute is suspended for the period in which a petition may be filed (150 days) and, if a petition is filed, until the decision of the Court is final (including the period for appeal), and for one year thereafter.
- (2) Prior to the Taxpayer Relief Act of 1997 (TRA 97), the IRC 6229(a) statute was not suspended in the case of untimely petitions. TRA 97 changed IRC 6229(d) to provide for suspension of the statute in the case of an untimely petition. The amendment is effective for partnership tax years for which the statute had not expired as of August 5, 1997.

8.19.1.7.6.8
(12-01-2006)
**Statute Extensions--
Partnerships**

- (1) IRC 6229(b) provides that the period of limitations of IRC 6229(a) may be extended either at the partnership level (IRC 6229(b)(1)(B)) or the partner level (IRC 6229(b)(1)(A)). As a general rule, an extension should be secured at the partnership level.

8.19.1.7.6.8.1
(10-01-2013)
**Partnership Level
Extensions**

- (1) A consent to extend the IRC 6229(a) statute made at the partnership level extends the period of assessments on all partners .
- (2) There are partnership level consent forms that allow the statute to be extended for an open-ended period or a date certain.
 - a. Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Partnership Items, is used to extend the partners' statutes for a specific time period.
 - b. Form 872-O, Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items, is an open-ended consent to extend the partners' statutes for an indefinite period of time.
- (3) Appeals officers are authorized by Delegation Orders 25-2 and 4-19 to execute consent forms.
- (4) AIMS and ACDS should be updated to show the revised statute date when a consent is secured. The Partnership Control System (PCS) is updated through AIMS. A copy of the consent should be scanned and emailed or faxed to both CTFs. Instructions for sending consents to the CTFs are found on the *Appeals TEFRA website*.

8.19.1.7.6.8.1.1
(10-01-2013)
**When a TMP Executes
Consents**

- (1) The preferred way to extend the IRC 6229(a) statute is for the TMP and the Service to execute the appropriate consent form.
- (2) One of the most troublesome areas in dealing with TEFRA statutes is the determination of the properly authorized TMP. See IRM 8.19.1.6.5.3 (Designation of Partnership TMP) for the requirements for designation of the TMP.
- (3) A partner's designation as TMP is terminated upon the filing of a petition in bankruptcy. The Service may be unaware of the bankruptcy filing, and the key case partnership may not realize it needs to select a new TMP. Prior to the Taxpayer Relief Act of 1997 (TRA 97), the validity of a consent signed by a

bankrupt TMP was questionable. Effective for consents signed after August 5, 1997, an extension signed by a bankrupt TMP is valid unless the TMP informed the Service of the bankruptcy in accordance with *Treas. Reg. 301.6223(c)-1(b)*.

- (4) See Exhibit 8.19.1–6 (Tier Entity As TMP) for the correct signature element to be used when the TMP is an entity.
- (5) For consolidated return tax years beginning before June 28, 2002, if a subsidiary in a consolidated filing group is the TMP of a partnership, both the signature of the parent (signing on behalf of the subsidiary TMP) and the signature of the subsidiary TMP are recommended on any statute extension by the TMP on behalf of the partners of the partnership. See *Treas. Reg. 1.1502-77A(a)*. The signature blocks would appear as follows:
 - [Name of common Parent corporation] by [name of authorized representative of Parent corporation, title], as common parent of the [name of Parent corporation] and Subsidiaries consolidated group, on behalf of [name of Subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership].
 - [Name of subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership] by [name of authorized representative, title].
- (6) For consolidated return tax years beginning on or after June 28, 2002, if a subsidiary in a consolidated filing group is the TMP of a partnership, the signature of the subsidiary TMP is recommended on any statute extension by the TMP on behalf of the partners of the partnership. See *Treas. Reg. 1.1502-77(a)(3)(v)*. The signature block would appear as follows:
 - [Name of subsidiary corporation], Tax Matters Partner of [name of TEFRA partnership] by [name of authorized representative, title].

8.19.1.7.6.8.1.2
(10-01-2013)

**When a Non-TMP
Executes Consents**

- (1) Consents may be executed by persons other than the TMP. IRC 6229(b)(1)(B) also allows any other person authorized by the partnership in writing to extend the statute at the partnership level.
- (2) *Treas. Reg. 301.6229(b)-1* requires the partnership to file a statement with the Campus where the partnership return is filed. The statement must meet the following requirements:
 - a. Provide that it is an authorization for a person other than the TMP to extend the assessment period with respect to all partners;
 - b. Identify the partnership and person being authorized by name, address, and taxpayer identification number;
 - c. Specify the partnership's tax year or years for which the authorization is effective; and
 - d. Be signed by all persons who were general partners at any time during the year or years for which the authorization is effective.

Note: To the extent that a Form 2848, Power of Attorney and Declaration of Representative, authorized pursuant to *Treas. Reg. 601.503(b)(1)* duplicates or substantially complies with *Treas. Reg. 301.6229(b)-1*, the authorization to execute the consent should be valid if made or authorized by all general partners. As a general matter, however, do not rely on Form 2848 since use of the form will generate litigation hazards.

8.19.1.7.6.8.1.3
(02-10-2009)

**Termination of
Open-ended Consents**

- (1) Open-ended consents may be terminated unilaterally by either the Service or the partnership.
 - a. If the Service executes the termination form, the statute of limitations will expire 90 days after the form is mailed to the TMP or Authorized Person.
 - b. If the TMP or Authorized Person executes the form, the statute of limitations will expire 90 days after the form is received by the Service.
- (2) Form 872-N, Notice of Termination of Special Consent to Extend the Time to Assess Tax Attributable to Partnership Items, is used to terminate the open-ended period for assessments specified in Form 872-O.

8.19.1.7.6.8.1.4
(12-01-2006)

Barred Statute Report

- (1) If the TEFRA partnership return statute of limitations expires, the person with jurisdiction over the return at the time of the expiration is responsible for following Barred Statute Report procedures as outlined in IRM 8.21.7. Form 3999T, Statute Expiration Report (for TEFRA key cases), is completed for expired TEFRA partnership cases. Form 3999, Statute Expiration Report (for other than TEFRA key cases) is used to report expired cases other than TEFRA partnership cases. Notification of the barred statute is sent to the partnership and each partner .
- (2) The key case Campus TEFRA Function (CTF) must be notified of the statute expiration.

8.19.1.7.6.8.2
(10-01-2013)

**Partner Level
Extensions of
Partnership Items**

- (1) Partner level extensions of the statute for partnership items are not encouraged except in the case of CIC corporate taxpayers who may be involved in multiple TEFRA partnerships or where the identity of the TMP is uncertain, and in other limited circumstances. Generally, an extension of IRC 6229(a) should be secured at the partnership level.
 - a. If a consent to extend the partnership statute is secured at the partner level, it will extend the period for assessment for that partner only. All consents, Form 872 and Form 872-A (revised October 2009 and later) contain the specific language extending the period for assessing partnership items. No modification is needed.
 - b. Consents with a revision date prior to October 2009 are general extension agreements with the partner under IRC 6501(c)(4) and do not contain the specific language referencing partnership items. These consents should have been modified as shown below. If no modification is made to consents with revision dates prior to October 2009, the consents do not extend the period for assessing partnership items.
- (2) The following specific language referencing partnership items should have been used on Form 872 or Form 872-A (with revision dates prior to October 2009) to extend the statute on partnership items secured at the partner level:

“Without otherwise limiting the applicability of this agreement, this agreement also extends the period of limitations for assessing any tax (including additions to tax and interest) attributable to any partnership items (see IRC 6231(a)(3)), affected items (see IRC 6231(a)(5)), computational adjustments (see IRC 6231(a)(6)), and partnership items converted to nonpartnership items (see IRC 6231(b)). This agreement extends the period for filing a petition for adjustment under IRC 6228(b) but only if a timely request for administrative adjustment is filed under IRC 6227. For partnership items which have converted to nonpartnership items, this

agreement extends the period for filing a suit for refund or credit under IRC 6532, but only if a timely claim for refund is filed for such items.”

- (3) If Form 872-A, with a revision date prior to October 2009 was used, the following additional language must be used:

“The issuance of a notice of deficiency will not terminate this agreement under paragraphs (1) and/or (2) for the items described by this paragraph. In accordance with paragraph (1) above, an assessment attributable to a partnership shall not terminate this agreement for other partnerships or for items not attributable to a partnership. Similarly, an assessment not attributable to a partnership shall not terminate this agreement for items attributable to a partnership.”

Caution: If the Form 872-A, (all revision dates) includes this special language, DO NOT issue a Form 872-T at the conclusion of the non-TEFRA proceeding unless all assessments relating to all TEFRA proceedings affecting the partner have been made. When non-TEFRA issues are resolved before the TEFRA issues, the non-TEFRA agreement is processed as a partial assessment.

- (4) If the language in paragraphs (2) and (3) above is used on the consent that extends the partner’s initial period of limitations, it may be used on subsequent consent forms. If the above language is not used on the initial consent, it should not be added to subsequent consents unless the IRC 6229 period is otherwise open at the time of the subsequent consents.

8.19.1.7.6.8.2.1
(12-01-2006)

**Limitations
Period--Partners**

- (1) The period of limitations for assessing a partner depends on whether there is a conversion of partnership items to nonpartnership items under IRC 6231(b) (see IRM 8.19.1.6.6.6), a defaulted FPAA, or a court decision.
- If partnership items are converted to nonpartnership items under IRC 6231(b), IRC 6229(f) provides that the period for assessing tax attributable to such items (or any item affected by such items) shall not expire before the date that is one year after the date on which the items become nonpartnership items.
 - If there has been a defaulted FPAA, IRC 6229(d) suspends the IRC 6229(a) statute for one year plus 150 days after the FPAA is mailed to the TMP.
 - If the FPAA is petitioned to a court and there is a decision of the court, the statute is suspended for one year after the decision of the court becomes final.

8.19.1.7.6.8.2.2
(10-01-2013)

**Penalties and Affected
Items**

- (1) The period for assessing penalties and affected items is the same as the period for assessing the tax relating to the partnership items.
- (2) For partnership tax years ending after August 5, 1997, penalties are determined at the partnership level. This represents a significant change in procedures for assessment of penalties. However, there is no change to the statute of limitations.
- (3) If an affected item determination must be made following completion of the TEFRA partnership proceeding, appropriate action should be completed before the statute for assessment expires. Before either the IRC 6229(f) or IRC 6229(d) statutes expire, the Service must:

- a. Secure an agreement pursuant to IRC 6213(d) and assess the penalty and tax from the affected items, or
 - b. Send an affected item statutory notice of deficiency.
- (4) If a notice of deficiency is issued for affected items during the one-year suspension period, the period of assessment will be further suspended pursuant to IRC 6503(a), for the time the Service is prohibited from assessing (90 days, plus any time while docketed in the Tax Court or until the Tax Court decision is final) and for 60 days thereafter.

Note: For partnership tax years ending after August 5, 1997, the penalties determined at the partnership level must be assessed within the one year period even if an affected item notice of deficiency to assess the deficiency resulting from affected items is required. Issuing a statutory notice of deficiency does not suspend the period for assessing the penalties.

- (5) If the partner's statute is open for an indefinite period (Form 872-A with a revision date prior to October 2009) because of a non-TEFRA issue, an affected item statutory notice of deficiency which is issued because of a TEFRA item will terminate the statute. If there is an ongoing non-TEFRA examination of a partner's return at the same time as there is an affected item proceeding, the AO assigned to the non-TEFRA issues should closely monitor any TEFRA affected item actions to avoid an inadvertent termination of the non-TEFRA statute.

8.19.1.7.6.8.2.3
(12-01-2006)
Defaulted FPAA

- (1) If no petition on an FPAA is filed during the 150 day period allowed by IRC 6226, the TEFRA case is defaulted. Under IRC 6229(d), assessments of partnership and affected items should be made before the expiration of 150 days plus one year from the date the FPAA was mailed to the TMP.

Caution: The period for assessment cannot be extended using a Form 872-F.

- (2) If any time remained on the three-year period for assessment under IRC 6229(a) at the time the FPAA was issued, the Service MAY be able to argue there is a tacking-on period. Do NOT rely on this tacking-on time when determining the time to assess partners. Always act as if there is no tacking-on period. If an assessment is not made within the appropriate period, and there was time remaining on the statute when an FPAA was issued, contact associate area counsel.

8.19.1.7.6.8.2.4
(11-25-2014)
**Statute Controlled at
Partner Level**

- (1) IRC 6501(a) provides the period of limitations for assessing any tax including tax attributable to partnership and affected items. This period runs from the filing date of an actual tax return rather than from the filing date of a pass-through entity information return (such as a partnership return). IRC 6229 merely extends each partner's IRC 6501 period. IRC 6229 provides that each partner's IRC 6501 assessment period for tax attributable to partnership and affected items shall not expire before the date that is three years after the later of the date on which the partnership return for the taxable year was filed, or the last day for filing the return for that year (determined without regard to extensions). Thus, IRC 6229 operates only to extend a partner's IRC 6501 period. It does not shorten the partners' otherwise applicable period for assessment. Statutes on TEFRA key cases received in Appeals are normally open under IRC 6229. However, there are occasions when Appeals receives a TEFRA key case where the IRC 6229 statute has expired (or the statute's future expiration has been approved) and the TEFRA proceeding is being

conducted in reliance on one or more of the partners' Assessment Statute Expiration Date (ASED) under IRC 6501. Tax assessments may be made against the partners when the statute is open under either IRC 6229 or IRC 6501. Cases received with expired IRC 6229 statutes may not contain all partners' returns as some of their ASEDS under IRC 6501 may have also expired.

- (2) The TEFRA Coordinator in SB/SE Technical Services will notify Appeals TEFRA Technical Specialists via email or telephone when there are 10 or more taxable partners in a case group before allowing the taxpayers to file a protest or transferring the case to Appeals.
- (3) This procedure should be rarely used. The campus will not suspense partner returns when the statute is not protected at the partnership level. All partner level statute controlled cases must be associated with the TEFRA key case.
- (4) Where Compliance approved the past or future expiration of the IRC 6229 statute, documentation of that decision and approval must be in the administrative file when received.
- (5) If Appeals receives a TEFRA partnership key case with the statute controlled at the partner level, the partners' cases will accompany the key case. The partners' returns that accompany the key case must have the same ASED and have a minimum of two years remaining on that ASED when received in Appeals. The point of having two years remaining on the ASEDS is to ensure sufficient time for Appeals to consider the case without securing additional extensions.
- (6) As described in (5), when the case is received in Appeals, the partner level ASEDS must meet certain criteria. While generally, statutes controlled at the partner level can be extended using Form 872 or Form 872-A, for this type of case, the partners' ASEDS must be extended using only the current revision of Form 872. These Forms 872 contain the specific language extending the period for assessing tax attributable to partnership items and provide a date certain for the partners' ASEDS. See IRM 8.19.1.7.6.8.2, *Partner Level Extensions of Partnership Items*.
- (7) Under this procedure, the ASED for the partnership key case will be different on AIMS and ACDS. On AIMS, the partnership key case ASED must show an AC alpha statute code. On ACDS, the partnership key case ASED will be the common numeric ASED for the partners' returns. All related partner returns will have the common numeric ASED date for both AIMS and ACDS. The partners' statute code field should be blank.
- (8) For the partnership key case, the ACDS notes section should show: "AC statute case". For the partner's cases, ACDS notes should show: "AC statute - related to [name of partnership]". The type code of the partnership key case is "TEFRA" and for the partners is "TEFRAI". Proposed dollars will be shown on the partnership key case in accord with IRM 8.19.10.2.4.2 and the exhibit at IRM 8.19.10-1; the partners' proposed dollars will be zero.
- (9) At the conclusion of the case, the partnership key case and partner cases will be handled as follows:
 - a. Agreed fully settled partnership adjustments – Appeals will secure agreements, execute them, and prepare closing packages. Mail the partner returns and the closing packages to the CTF. At this point there is a one-year assessment date and the CTF can process the partner cases (do

the computations and assessments). The assessments must be made as soon as possible after the agreement is received.

- b. Unagreed cases with one year or more remaining on common statute - Appeals will prepare the required FPAA language for the unagreed issues. The cases (partnership key case and partner cases) will be returned to SB/SE Technical Services. One year must remain on the partner's common statute when received by SB/SE Technical Services.
- c. Unagreed cases with less than one year remaining on common statute - Appeals will prepare and issue the FPAA. After the FPAA is issued, the partner cases will be sent to the CTF for suspense.
- d. Partially agreed cases - Instructions for preparing partial agreements are in IRM 8.19.11.11. Appeals prepares the required closing packages for the partial agreement and sends it to the CTF. For unagreed issues, follow the instructions in b. or c. above.

(10) For Compliance instructions for these procedures, refer to IRM 4.31.2.4.1.1.

8.19.1.7.7
(10-01-2013)
Notices

- (1) Partners must be told when the audit of the partnership (key case) has started, when it concludes, and the adjustments that are proposed, if any.
- (2) IRC 6223 requires that the Service mail the TMP, all notice partners, and the designated representative of a notice group two types of notices when a unified proceeding is conducted: a Notice of Beginning of Administrative Proceeding (NBAP) and a Notice of Final Partnership Administrative Adjustment (FPAA).

Note: The term "notice partner" is defined in IRM 8.19.1.6.7.1, below.

- (3) When the examination of a TEFRA partnership begins, the examining agent presents the NBAP Letter 1787) to the TMP. IRM 4.31.2.2 explains the steps that the examining agent will take upon opening a TEFRA examination. IRM 4.31.2.2.7 tells how to link the return on the Partnership Control System (PCS).
 - a. Once a return is linked on PCS, an NBAP is sent to each notice partner via certified mail to the address shown on Schedule K-1.
 - b. If PCS is not used, the examining agent is responsible for the certified mailing of the NBAPs to all notice partners .

Note: Delegation Order 4-19 authorizes revenue agents (grade GS-11 and higher) to sign the NBAP. Appeals personnel have no authority to sign the NBAP.

- (4) The FPAA is the equivalent of a statutory notice of deficiency under deficiency procedures. It shows the changes to be made to partnership items and describes the partner's judicial rights. The tax effect on the partners is not computed in the FPAA. IRM 8.19.12 provides guidance for issuing the FPAA.
- (5) IRC 6223(d) prescribes time frames for mailing the NBAP and the FPAA.
 - a. The NBAP must be mailed at least 120 days before the FPAA is mailed to the TMP.
 - b. The FPAA is mailed to the TMP and to each notice partner. The FPAA mailed to the notice partner must be mailed within 60 days after the date the FPAA is mailed to the TMP.
 - c. IRM 8.19.1.6.7.2 describes the procedures that are used when notices are not mailed within the prescribed time frames.

Note: Use command code TSINQP to see the 120 and 60 day dates.

(6) A copy of the certified mailing list should be included in the administrative file.

8.19.1.7.7.1
(10-01-2013)

**Notice Partners and
Non-Notice Partners**

- (1) A notice partner is a partner in a partnership that is entitled to receive an NBAP and an FPAA directly from the Service.
 - a. All identified partners are notice partners if there are 100 or fewer partners in the partnership.
 - b. An identified partner is a partner whose name, address, and taxpayer identification number is furnished on the partnership return or who has furnished additional information to the Service according to *Treas. Reg. 301.6223(c)-1(b)*.
- (2) A notice partner may be a pass-thru partner.
 - a. A pass-thru partner is a partnership, estate, trust, S corporation, nominee, or other similar person through whom other persons hold an interest in the partnership. A single member LLC that is a disregarded entity for federal tax purposes is also a pass-thru partner.
 - b. An indirect partner is a partner who holds an interest in a partnership through one or more pass-thru partners.
- (3) If a partnership has more than 100 partners, not all of them will receive a notice directly from the Service.
 - a. An identified partner having less than 1 percent profits interest is not entitled to receive notice from the Service. The partner is referred to as a non-notice partner.
 - b. Partners owning a total of 5 percent of the profits interest of the partnership may form a notice group. One member of the group will be designated as the representative to receive notices. An indirect partner may only join a notice group if the indirect partner has been identified as provided in IRC 6223(c) and *Treas. Reg. 301.6223(c)-1* before joining the notice group. See *Treas. Reg. 301.6223(b)-1*.
- (4) Non-notice partners should receive copies of the required notices, even though the Service does not send them directly.
 - a. The TMP is obligated to forward notices to non-notice partners.
 - b. Pass-thru partners are required to forward notices to indirect partners.
 - c. A representative of a notice group is required to forward notices to the members of the notice group.

Note: Failure of the TMP or a pass-thru partner to forward a notice does not affect the validity of the TEFRA proceeding. (IRC 6230(f))

- (5) The Service may, at its discretion, send notices directly to non-notice or indirect partners. The mailing of such notice does not convert a non-notice partner to a notice partner, but may convert an indirect partner to a notice partner. IRC 6223(c)(3) and *Treas. Reg. 301.6223(c)-1(f)*.

8.19.1.7.7.2
(10-01-2013)
**Untimely Mailing of
Notices Under IRC
6223(d)**

- (1) The options available to a partner when notice requirements are not met depend on whether the partnership proceeding is still ongoing or has concluded.
 - a. If the proceeding is still ongoing, the partner becomes a party to the proceeding unless the partner either elects to accept a settlement agreement that is consistent with the agreement made with another partner or elects to have partnership items treated as nonpartnership items (IRC 6223(e)(3)).
 - b. If the proceeding has concluded, the partner's partnership items are treated as nonpartnership items unless the partner elects to either accept a settlement agreement that is consistent with the agreement made with another partner or accept the terms of the FPAA or court decision (IRC 6223(e)(2)).
- (2) Untimely notice letters are sent to the partner to describe the available options. The letters, Letter 3857 and Letter 3858, explain how a partner makes an election. See IRM 8.19.12.9 for detailed procedures on mailing untimely notices.

8.19.1.7.8
(12-01-2006)
**Controls and Processing
of TEFRA Cases**

- (1) The appeals proceeding is conducted at the key case level. Cooperation with other IRS functions is necessary to ensure that the tax effect of the adjustments is accurately and timely made at the partner level.
- (2) Appeals personnel are encouraged to use the Campus TEFRA Function (CTF) and the Partnership Control System (PCS) to assist in all mailings to the partners, including correspondence, agreements, and notices. Refer to IRM 8.19.1.6.8.3 for discussion of the Partnership Control System.

8.19.1.7.8.1
(12-01-2006)
TEFRA Key Case

- (1) The TEFRA partnership return (key case file) will be sent to Appeals, and the partner files are generally maintained at the Campus TEFRA Function (CTF) at the campuses.

8.19.1.7.8.2
(10-01-2013)
TEFRA Partner Case

- (1) Generally the partner cases are suspended and controlled in the Campus TEFRA Function (CTF) at certain campuses. The AO evaluates the case at the partnership level. The CTF is responsible for the tax computations and timely assessments at the partner level, except for CIC corporation, Joint Committee, and other corporate specialty partner cases.
- (2) The computation and timely assessment of tax for partners who are CIC corporation, Joint Committee, and other corporate specialty partner taxpayers are the responsibilities of the employee with jurisdiction of the partner case when the partnership items are converted to nonpartnership items, the FPAA is defaulted, or the court decision is final. See IRM 8.19.6.2, Partner Case Responsibility.

8.19.1.7.8.3
(10-01-2013)
**Partnership Control
System (PCS)**

- (1) The Partnership Control System (PCS) is a separate computer system that serves as a vital link between the key case return and the investor returns. It performs a number of tasks:
 - a. Contains both pass-thru entity and related investor records for both TEFRA and non-TEFRA key cases.
 - b. Establishes a linking relationship (linkage) between a pass-thru entity record and the related investor records.

- c. Distinguishes between TEFRA and non-TEFRA records.
- d. Places a freeze condition for each related investor on the investor's corresponding AIMS record to prevent premature closing of the AIMS record (which would break all pending linkages).
- e. Generates settlement letters for partners in TEFRA key cases.
- f. Generates notices to partners in TEFRA key cases. .
- g. Provides IDRS terminal research capabilities for key case and investor records.
- h. Records the partner's one-year statute dates in TEFRA key cases and provides reports to assist in the timely assessment of tax.

- (2) IRM 4.29, Partnership Control System (PCS) Handbook gives a detailed description of the Partnership Control System.

8.19.1.7.8.4
(10-01-2013)

Examination Process

- (1) The examination of the key case partnership officially begins when the Notice of Beginning of Administrative Proceeding (NBAP) is presented to the TMP. When the case is linked on PCS, the Campus TEFRA Function (CTF) mails NBAPs to all notice partners. A duplicate copy of the NBAP should be mailed to the TMP at that time so that the certified mailing list can be used to show mailing to all relevant partners.
- (2) The examiner conducts the audit and prepares a summary report that is given to the TMP for forwarding to the partners. A closing conference will be scheduled no earlier than 30 days after the issuance of the summary report to the TMP unless the right to the conference is waived in writing by the TMP.
- (3) Unagreed cases are forwarded to the Exam Technical Services for 60-day letter preparation. The 60-day letter is the equivalent of a 30-day letter in deficiency proceedings. It gives the partners the opportunity to appeal the findings of the examiner. Exam Technical Services forwards the 60-day letter package to the key case CTF for mailing to the TMP and all notice partners.
- (4) If no partner protests, Exam Technical Services prepares a notice of Final Partnership Administrative Adjustment (FPAA) and forwards it to the key case CTF for mailing to the TMP and all notice partners. For protested cases, Exam Technical Services batches all of the protests together and forwards the key case file to Appeals for consideration.
- (5) A detailed explanation of the examination process is given in IRM 4.31.2, TEFRA Examinations – Field Office Procedures. Exhibit 4.31.2-2 provides a TEFRA Flow-Through Examination Time Chart.

8.19.1.7.8.5
(10-01-2013)

Campus Processing

- (1) A Campus TEFRA Function (CTF) is currently located at two campuses: Brookhaven and Ogden. The CTF may act as a key case CTF or a partner CTF or both.

8.19.1.7.8.5.1
(10-01-2013)

Key Case Campus TEFRA Function (CTF)

- (1) The key case CTF services the Appeals office that controls the TEFRA key case return. The key case CTF sets up an administrative file for each key case and generates notices and settlement agreements to the TMP, notice partners and notice group representatives. Mailings include NBAPs, 60-day letters, settlement offers, and FPAAAs.

- (2) Generally, the Brookhaven Campus is the key case campus for key cases generated by SB/SE. Generally, the Ogden Campus is the key case campus for key cases generated by LB&I. To determine which CTF is the key case campus, follow these steps:
 - a. Order IDRS Command Code TSINQP for each year of the key case.
 - b. Look in the "CTF-CD" field for either "OSC" (Ogden) or "BSC" (Brookhaven).
 - c. If the TSINQP shows Ogden, then Ogden is the key case campus.
 - d. If the TSINQP show Brookhaven, then order IDRS Command Code TXMODC for each year of the key case. If there is no data, then Ogden is the key case campus. If there is data, look in the "Control Base and History Information" section. If the "Assign To" column has numbers that begin with 0179, then Brookhaven is the key case campus. If there are no numbers in the "Assign To" column, then Ogden is the key case campus.

8.19.1.7.8.5.2
(10-01-2013)
Partner CTF

- (1) The partner CTF controls the partner returns. The partner CTF receives the signed settlement agreements from the key case CTF, makes assessments, and generates audit reports (Form 4549-A) showing the tax liability of each partner under its control. It also prepares and mails 30-day and 90-day letters for penalties (for tax years ending before August 6, 1997) and affected items. It may be referred to as the "report campus."
- (2) Generally, the partner CTF and key case CTF are the same unit.
- (3) If there is an open AIMS database at the time that the PCS controls are initiated and the case is not a CIC corporation or other corporate specialty case, the partner CTF will be the CTF that already controlled the partner return.
- (4) If the partner return is a CIC corporation or other corporate specialty taxpayer, the CTF will open the AIMS database to the area that customarily does that examination. The CTF will notify the group that does that examination that the case is open on AIMS with the partnership linkage, and the group is responsible for the partner return.

8.19.1.7.9
(10-01-2013)
**Partnership/
Nonpartnership/Affected
Items**

- (1) Items are generally classified as partnership items, nonpartnership items, or affected items. The classification of an item governs whether the court has jurisdiction over a particular item in a particular proceeding. For example, if a partnership item is not raised in the partnership level proceeding, it cannot be raised by the Service, the partnership, or any of the partners in an affected item proceeding.
- (2) A partnership item is any item more appropriately determined at the partnership level than at the partner level. See IRC 6231(a)(3) and IRM 8.19.1.6.9.1.
- (3) A nonpartnership item is an item that is not (or is not treated as) a partnership item. See IRC 6231(a)(4) and IRM 8.19.1.6.9.2.
 - a. For example, the Form 1040 of a partner in a TEFRA partnership may report both rental income from a building that the partner owns and income from a TEFRA partnership. The rental income is a nonpartnership item. Any adjustments in connection with this item will be made using deficiency procedures.

- b. Partnership items may be converted to nonpartnership items. For example, when the partner enters into a settlement agreement for adjustments to the TEFRA partnership, the partnership items are converted to nonpartnership items.

- (4) An affected item is any item to the extent it is affected by a partnership item. There are two types of affected items—those that only require a direct assessment and those that require partner level determinations through a notice of deficiency. See IRC 6231(a)(5) and IRM 8.19.1.6.9.3.
- (5) Any change to the tax liability of a partner that is attributable to a computation of adjustments of partnership items is directly assessed. The Service computes the tax effect of the adjustments and sends the partner a notice of the computational adjustment. See IRC 6231(a)(6) and IRM 8.19.1.6.9.7.
- (6) An exception to both the TEFRA partnership rules and deficiency procedures is made for the correction of mathematical and clerical errors. See IRC 6230(b) and IRM 8.19.1.6.9.7.1.

8.19.1.7.9.1
(10-01-2013)

Partnership Items

- (1) In general, partnership items are any items that are more appropriately determined at the partnership level than at the partner level. See IRM 8.19.1.6.9.1.1 for a description of partnership items under *Treas. Reg. 301.6231(a)(3)-1*.
- (2) The determination of whether a partnership engaged in sham transactions or whether the partnership transactions have economic substance is made at the partnership level.
- (3) Statute of limitations defenses regarding the determination of partnership items are raised only at the partnership level.
- (4) If a partnership return is filed by an entity for a tax year, but it is determined that the entity is not a partnership for that year, the TEFRA partnership rules will apply. This issue is a partnership item that must be raised in a partnership proceeding.
- (5) If a partnership return is filed for a tax year, but it is determined that no entity exists, the TEFRA partnership rules will apply. This issue is a partnership item that must be raised in a partnership proceeding.
- (6) Some issues combine a determination at the partnership level with a determination at the partner level. These are discussed in IRM 8.19.1.6.9.4, *Issues With Both Partnership and Partner Level Elements*.

8.19.1.7.9.1.1
(10-01-2013)

Treas. Reg. 301.6231(a)(3)-1

- (1) *Treas. Reg. 301.6231(a)(3)-1* provides that partnership items include the partnership aggregate and each partner's share of each of the following:
 - a. Items of income, gain, loss, deduction, or credit of the partnership;
 - b. Expenditures by the partnership that are not deductible in computing its taxable income, such as foreign taxes or charitable contributions;
 - c. Any item that could be a tax preference item for any partner;
 - d. Exempt income;
 - e. The amount and type of any partnership liabilities (e.g., recourse or non-recourse);
 - f. Other amounts determinable at the partnership level with respect to partnership assets, investments, transactions, and operations necessary to enable the partnership or the partners to determine the investment credit,

recapture of the investment credit, amounts at risk in any activity to which IRC 465 applies, the depletion allowance under IRC 613A with respect to oil and gas wells, and the application of IRC 751(a) and IRC 751(b).

- (2) In addition, Treas. Reg. 301.6231(a)(3)-1 also provides that partnership items include:
 - a. Guaranteed payments.
 - b. Optional adjustments to the basis of partnership property pursuant to an IRC 754 election (including necessary preliminary determinations, such as the determination of a transferee partner's basis in a partnership interest).
- (3) Partnership items also include:
 - a. Contributions to the partnership.
 - b. Distributions from the partnership.
 - c. Transactions to which IRC 707(a) applies (including the application of IRC 707(b)).
- (4) It is not necessary for the regulations to specifically identify an item as a partnership item. For example, tax benefit items have been determined to be partnership level items, even though they are not specified as such.

8.19.1.7.9.2
(10-01-2013)
Nonpartnership Items

- (1) IRC 6231(a)(4) provides that a nonpartnership item is an item that is not (or is not treated as) a partnership item.
- (2) A partnership item may be converted to a nonpartnership item under certain circumstances.
- (3) When a partner enters into a settlement agreement with the Service, partnership items are converted to nonpartnership items. Deficiency procedures do not apply to these conversions. The tax attributable to the adjustments is assessed by means of a computational adjustment.
- (4) Some conversions of partnership items to nonpartnership items, other than by settlement, will require the Service to use deficiency procedures in the resolution of any controversy. See IRM 8.19.1.6.9.2.1.
- (5) Once partnership items have been converted to nonpartnership items for a partnership tax year, they cannot regain status as partnership items. For example, if a partner files a petition in bankruptcy, partnership items become nonpartnership items on the date the petition is filed. The nonpartnership items will not revert back to partnership items if the bankruptcy case is dismissed.

8.19.1.7.9.2.1
(10-01-2013)
**Conversion Events
Requiring Use of
Deficiency Procedures**

- (1) The following conversion events require the use of deficiency procedures in resolution of any controversy.
 - a. The Service sends the partner a notice that partnership items will be treated as nonpartnership items, but only if it is sent before an NBAP is mailed to the TMP and only if the partner has filed a Form 8082. See IRC 6231(b)(1)(A), IRC 6231(b)(2) , and IRC 6231(b)(3).
 - b. The partner files suit under IRC 6228(b) after the Service fails to allow an administrative adjustment request (AAR) with respect to any of the items. See IRC 6231(b)(1)(B) and IRC 7422(e).

- c. The Service fails to provide notice under IRC 6223(a), and the partner elects to have partnership items treated as nonpartnership items (by taking no action if the partnership proceeding is finished or by making an election, if the proceeding is ongoing).
- d. A termination or jeopardy assessment is made (conversion occurs the moment before the assessment is made). See *Treas. Reg. 301.6231(c)-4*.
- e. A partner is the subject of a criminal income tax investigation (conversion occurs on the date that a written notice of conversion is mailed to a taxpayer). *Treas. Reg. 301.6231(c)-5*.
- f. An indirect method of proof is used to determine a partner's tax liability (conversion occurs on the date that a statutory notice of deficiency is mailed). See *Treas. Reg. 301.6231(c)-6*.
- g. A petition in bankruptcy is filed or a receiver is appointed (conversion occurs on the date the petition is filed or the receiver is appointed). See *Treas. Reg. 301.6231(c)-7*.
- h. A request for prompt assessment is filed (conversion occurs on the date the request is filed). See *Treas. Reg. 301.6231(c)-8*.

8.19.1.7.9.3
(12-01-2006)
Affected Items

- (1) An affected item is defined in IRC 6231(a)(5) as any item to the extent such item is affected by a partnership item.
- (2) There are two types of affected items:
 - a. those that may be directly assessed as purely computational adjustments once the partnership level proceeding is complete, and
 - b. those that require one or more partner level determinations to be made once the partnership level proceeding is complete.

8.19.1.7.9.3.1
(10-01-2013)
**Affected Items Not
Requiring Partner Level
Determinations**

- (1) A direct computational assessment is only appropriate where the effect of the partnership item on the partner's tax liability can be computed mathematically without further determinations at the partner level. If an additional factual determination is required, the adjustment cannot be made as a computational adjustment. See IRM 8.19.1.6.9.7 for additional discussion regarding computational adjustments.

Example: A change to the threshold for the medical expense deduction under IRC 213 is an affected item that is adjusted in a computational adjustment. No further factual determination is required.

- (2) Changes to carryovers and carrybacks of credits and net operating losses are affected items made as computational adjustments, even when the year in which the loss or credit has an effect on the partner's tax liability is different from the tax year that was adjusted.

Example: As a result of the examination of the 2007 partnership tax return of Hydrangea Associates (a TEFRA partnership), the net operating loss deduction reported on Philip Phlox's 2007 Form 1040 was reduced by \$30,000. Phlox had carried the loss back to 2004. The Service will make a computational adjustment for 2004 that will reduce the net operating loss carryback by \$30,000.

- (3) The alternative minimum tax will be an affected item made with a directly assessed computational adjustment for any tax year where the partner has

partnership items because adjusted gross income, the starting point for calculating the AMT, will include partnership items.

- (4) Affected items that do not require partner level determinations should not be raised in either an FPAA or a statutory notice of deficiency. Instead, changes are included in a directly assessed computational adjustment subsequent to the partnership proceeding and/or the entry of a final decision of a court.

8.19.1.7.9.3.2
(10-01-2013)

**Affected Items Requiring
Partner Level
Determinations**

- (1) Deficiency procedures apply to affected items that require factual development at the partner level.
- (2) The statute for affected items requiring a partner level determination is the same as the statute for partnership items. For example, in the case of a settlement of partnership items, IRC 6229(f) is the controlling statute for the assessment of adjustments attributable to partnership items, computational affected items, and affected items requiring a partner level determination.
- (3) The Service is not required to conduct a partnership proceeding before it examines an affected item issue that requires a partner level determination. If there is no partnership proceeding, the IRS accepts the partnership return as filed. See *Roberts v. Commissioner*, 94 T.C. 853 (1990), page 860.

Caution: Failing to conduct a partnership proceeding (or a partnership proceeding that results in the partnership return being accepted as filed) will bind the Service to all partnership items as reflected on the partnership books and records for purposes of determining affected items.

- (4) Some issues combine a determination at the partnership level with a determination at the partner level. These are discussed in IRM 8.19.1.6.9.4, Issues With Both Partnership and Partner Level Elements.

8.19.1.7.9.3.3
(10-01-2013)

**Affected Item Notice of
Deficiency**

- (1) If the affected item issue is unagreed, an affected item notice of deficiency is issued.
- (2) Affected item notices of deficiency are an exception to IRC 6212(c), which restricts the number of deficiency notices that may be sent to a taxpayer for a tax year. A partner may receive a statutory notice for nonpartnership items and a statutory notice for affected items of a TEFRA partnership.
- (3) The affected item notice of deficiency is treated in the same way as a deficiency notice issued for nonpartnership items. The taxpayer may petition the Tax Court or pay the asserted deficiency, file a claim for refund, and bring a refund action if the claim is not allowed.
- (4) An affected item notice of deficiency generally includes only the affected items of one partnership. Separate notices generally are sent for each partnership for each tax year. See IRC 6230(a)(2)(B).

Example: Marilyn Anemone is a partner in 2 TEFRA partnerships, Calla Lily Partners and Foxglove Associates. She has petitioned a statutory notice of deficiency that was issued for nonpartnership items. She enters into settlement agreements for partnership items of both partnerships but does not agree to affected item adjustments that require a partner-level determination. The Service may issue two separate affected item notices

of deficiency (one for each partnership). Alternatively, the affected items can be combined into a single notice if statute of limitations considerations permit.

8.19.1.7.9.4
(10-01-2013)
**Issues With Both
Partnership and Partner
Level Elements**

- (1) The classification of an item as a partnership item or an affected item can be complicated when elements of both are contained within the issue. There may be an initial determination made at the partnership level, with additional factual development required at the partner level. For example, both partnership and partner level determinations are found in such issues as disguised sales, guaranteed payments, transactions to which IRC 707(a) applies, passive loss limitations, at-risk limitations, income from cancellation of indebtedness, the basis of a partner's interest in the partnership, and the limitation on partnership losses under IRC 704(d).
- (2) The following examples are intended to assist in understanding the interrelationship of partnership items and affected items that require a partner level determination. They are not intended as a complete list of all issues that have both partnership and affected item components.
 - a. **Guaranteed Payments** – The amount of the guaranteed payment deductible by the partnership and the allocation of the payment between partners are partnership items. The deductibility of business expenses incurred by the partner in the course of earning the guaranteed payment is an affected item if the business expenses are not deducted by the partnership.
 - b. **Transactions to Which IRC 707(a) Applies** – The amount and character of amounts transferred from the partnership to the partner or from a partner to the partnership in a transaction to which IRC 707(a) applies are partnership items. A partner's gain or loss on the transaction requires a partner level determination. For example, if a partner sells office supplies to the partnership, the amount and character of the sale are partnership items, but the computation of the gain recognized by the partner may require a partner level determination of the basis of the supplies sold to the partnership.
 - c. **Passive Loss Limitations** – Partnership level determinations include whether the partnership engaged in rental activity, whether the partnership engaged in a trade or business under IRC 162, and whether a partner in a limited partnership is a general or a limited partner for passive loss purposes. A partner level determination must be made to determine whether the partner materially participated in the trade or business of the partnership.
 - d. **At-Risk Limitations** – The nature and extent of partnership liabilities (for example, whether a loan is recourse or non-recourse) is determined at the partnership level. The determination of whether a partner has protection from loss can only be resolved by looking to the existence of third party agreements entered into by the individual partners. The determination of whether the partner is a related party under IRC 465(b)(3) is also determined at the partner level.
 - e. **Income from Cancellation of Indebtedness** - Issues at the partnership level include whether partnership property was repossessed, whether partnership debt was recourse or nonrecourse, the fair market value of partnership property at the time of repossession, the amount of partnership debt, the adjusted basis of partnership property, whether the debt is Qualified Real Property Business Indebtedness under IRC 108(c)(3), and

whether the debt is qualified acquisition indebtedness. Issues at the partner level include whether the partner is an entity other than a C corporation, whether the partner is bankrupt or insolvent, and whether the partner has made a proper election to reduce basis in depreciable property.

- f. **Basis of a Partner's Interest in a Partnership** – Issues at the partnership level include the basis of property contributed to the partnership (including money), basis of property that is subject to a IRC 754 election, the total and distributive share of taxable income of the partnership, exempt income, partnership losses, and expenditures not deductible, not capitalized, increases and decreases in a partner's share of partnership liabilities (for example, the nature and amount of the partnership loans), and the amount of cash distributed and the adjusted basis of property distributed to a partner. Issues at the partner level include the cost to purchase the partnership interest (if no IRC 754 election is made by the partnership for such cost), the basis at the time of acquisition by gift, bequest, transfer, or exchange, and the basis in the partner's interest in the partnership immediately before a distribution.
- g. **Limitation of Partnership Losses Under IRC 704(d)** – The amount of the partnership loss distributed to the partner is a partnership item. The limitation of the loss, measured by a partner's basis in the partner's interest in the partnership, is an affected item because it requires a partner level determination.

8.19.1.7.9.5
(10-01-2013)
Penalties

- (1) Penalty issues have both partnership and partner level elements. For example, the determination of the value of partnership property is made at the partnership level. If there is a substantial misstatement of valuation, a partner may not be subject to the penalty if it is shown that the partner acted in good faith and had reasonable cause for the actions taken.
- (2) For partnership tax years ending before August 6, 1997, the assessment of penalties is accomplished in the same manner as other affected items that require a determination at the partner level. Penalties are asserted in a deficiency procedure if they are unagreed.
- (3) For partnership tax years ending after August 5, 1997, the applicability of penalties is determined at the partnership level. Penalties will be assessed as a computational adjustment regardless of whether partner level determinations are required for the penalty or underlying deficiency. The partner must pay the penalty and file a claim for refund within six months of the date that the notice of computational adjustment is mailed. See IRC 6230(c)(2)(A). See also IRM 8.19.2.10.3(3) and IRM 8.19.11.10.1.

8.19.1.7.9.6
(10-01-2013)
**Appeals Consideration
of Penalties and
Affected Items**

- (1) Partner-level elements of penalties or affected items proposed by Compliance should be included in an Affected Item Report. The AO will evaluate the issues and develop a settlement position based on the facts at the key case level. See IRM 8.19.10.4.7.

8.19.1.7.9.7
(10-01-2013)
**Computational
Adjustments**

- (1) IRC 6231(a)(6) defines a computational adjustment as the change in the tax liability of a partner that properly reflects the treatment of a partnership item. A computational adjustment may be directly assessed without resorting to deficiency procedures if no partner-level determinations are required; a computational adjustment is directly assessed in three circumstances.

- a. To conform the partner's return to the treatment of partnership items on the partnership return when the partner does not notify the Service of an inconsistent treatment of the partnership items.
 - b. To apply the results of a partnership determination, such as a settlement agreement, a defaulted FPAA, or a court decision.
 - c. To disallow the losses and credits claimed by a partner when the provisions of *Treasury Reg. 301.6231(f)-1* are not met. This regulation applies to partnerships that do not file a partnership tax return and, at the close of a tax year, have a TMP residing outside of the United States or maintain books and records outside of the United States. The Service may make a computational adjustment to eliminate the losses and credits if no return is filed within 60 days of the date the Service mails a notice to the partner.
- (2) The directly assessed computational adjustment may include a change in tax liability that reflects a change in an affected item where that change is necessary to reflect the treatment of a partnership item and the affected item does not require a partner level determination.
 - (3) The computational adjustment may be assessed without following deficiency procedures if no partner-level determinations are required. A notice of computational adjustment, which shows the adjustments made to the partner's tax return and the change to tax liability, is sent to the partner. The form entitled "Notice of Income Tax Examination Changes" was formerly used for this purpose. Currently, Letter 4735 , Notice of Computational Adjustment, is used. If the notice of computational adjustment shows a tax liability that exceeds the amount reported by the partner, additional tax and accrued interest will be assessed. If the notice of computational adjustment shows less tax than reported by the partner, any excess tax and interest previously paid will be credited to the partner's account.
 - (4) If a partner does not agree with the computational adjustment, IRC 6230(c)(2)(A) allows the partner to file a claim for refund within six months after the date the notice of computational adjustment is mailed to the partner. The adjustments to partnership items cannot be challenged.
 - (5) If the Service fails to allow a credit or refund resulting from an overpayment attributable to a computational adjustment, IRC 6230(c)(2)(B) allows a partner to file a claim within 2 years of the date that the settlement was entered into, the FPAA defaulted, or the decision of the court became final.

8.19.1.7.9.7.1
(10-01-2013)

**Correction of
Mathematical and
Clerical Errors**

- (1) The Secretary is generally not required to follow deficiency proceedings to make tax liability adjustments that result from the correction of mathematical and clerical errors appearing on the partnership return. See IRC 6230(b). Under IRC 6213(g)(2), the term "mathematical and clerical error" generally refers to:
 - a. an error in addition, subtraction, multiplication or division shown on the return;
 - b. an incorrect use of any table provided by the IRS with respect to any return if such incorrect use is apparent from the existence of other information on the return;
 - c. an entry on a return of an item which is inconsistent with another entry of the same or another item on such return;

- d. an omission of information which is required to be supplied on the return to substantiate an entry on the return, and
 - e. an entry on a return of a deduction or credit in an amount which exceeds a statutory limit.
- (2) If the TMP requests substituted return treatment on an Administrative Adjustment Request (AAR) filed on behalf of the partnership, the Secretary may treat the changes shown on the AAR as corrections of mathematical or clerical errors appearing on the partnership return. IRC 6227(c)(1)(B).
- (3) A partner has 60 days from the date the service mails the partner a notice of the mathematical or clerical error to request that the correction not be made. See IRC 6230(b)(2) and *Treas. Reg. 301.6230(b)-1*. If this request is filed, the IRS has two options:
- a. Make no assessment to that partner with respect to the partnership items. This alternative would be appropriate where it is determined that the adjustment of that partner's distributable share of partnership items would not result in a material change to tax liability, e.g., the partner's Form 1040 reflects a negative taxable income which does not result in a net operating loss.
 - b. Start a unified partnership proceeding. This alternative is appropriate where the change in tax liability is material and/or a large number of partners file objections.

8.19.1.7.10
(10-01-2013)
Agreement Forms

- (1) Special agreement forms have been developed for TEFRA partnerships because of the unique nature of TEFRA agreements.
- (2) The partner agrees to the adjustments that should be made at the partnership level. The agreement form does not show the amount that is allocable to the partner unless the allocation of income is an issue raised in the examination. The tax effect at the partner level is determined after the agreement is secured (when a computational adjustment is made).
- (3) Once the agreement is accepted for the Commissioner, the treatment of partnership items will not be reopened in the absence of fraud, malfeasance, or misrepresentation of fact; and no claim for refund or credit based on any change in the treatment of partnership items may be filed or prosecuted. The authority for this is found in IRC 6224(c).
- (4) The specific circumstances in each case will determine which agreement form is used.
- (5) Separate agreement forms have been developed to distinguish Appeals settlements from agreements secured during the examination. Appeals agreement form numbers end with the suffix "(AD)."
- (6) The Taxpayer Relief Act of 1997 (TRA 97) changed the way that penalties resulting from a TEFRA partnership adjustment are assessed.
 - a. For partnership tax years ending before August 6, 1997, penalties and other affected items that cannot be made through a computational adjustment are determined separately from the partnership item determination. A separate agreement is secured to allow the assessment, or a statutory notice of deficiency is issued.

- b. For partnership tax years ending after August 5, 1997, the applicability of penalties is determined at the partnership level. The penalty is directly assessed as a computational adjustment. Partner level defenses may be raised in a refund proceeding. See IRC 6230(c)(4) .
 - c. Affected items other than penalties are assessed in the same manner regardless of the tax year. A separate agreement is secured to allow the assessment, or a statutory notice of deficiency is issued.
- (7) As a result of the change to the method of assessing penalties, different agreement forms are used for partnership tax years ending before August 6, 1997 (see Figure 1–3 and for partnership tax years ending after August 5, 1997 (see Figure 1–4).

Agreement Forms Used for Partnership Tax Years Ending Before August 6, 1997

Type of Agreement	Compliance Form	Appeals Form
Partnership items only	870-P	870-P(AD)
Partnership items, penalties and certain affected items (Applies only to IRC 465, 469 and 704(d))	870-L	870-L(AD)

Figure 8.19.1-3

Agreement Forms Used for Partnership Tax Years Ending After August 5, 1997

Type of Agreement	Compliance Form	Appeals Form
Partnership items with or without penalties	870-PT	870-PT(AD)
Partnership items and all other affected items	870-LT	870-LT(AD)

Figure 8.19.1-4

- (8) Transmittal Letter 3394 and Letter 3395 are used to transmit Appeals settlement agreement forms on non-docketed TEFRA partnership cases. Transmittal Letter 2606 and Letter 2607 are used to transmit Appeals settlement agreement forms on docketed TEFRA partnership cases.
- (9) Refer to the following exhibits for a sample Schedule of Adjustments page:
 - a. Exhibit 8.19.1-4 Form 870-PT(AD)
 - b. Exhibit 8.19.1-5 Form 870-LT(AD)
- (10) Refer to IRM 8.19.11, for additional information on preparing settlement agreements.

8.19.1.7.10.1
(10-01-2013)
**Special Features of
Forms 870-LT, and
870-LT(AD)**

- (1) The Forms 870-LT and 870-LT(AD) have two parts.
- (2) Part I resolves partnership items (and the applicability of penalties, additions to tax, and additional amounts for partnership tax years ending after August 5, 1997). The taxpayer accepts the adjustments proposed in Part I by signing the waiver in that section.
- (3) Part II resolves all affected item issues for tax years ending after August 5, 1997. The taxpayer accepts the adjustments proposed in Part II by signing the waiver in that section.
- (4) Part II – Affected Items are treated as follows:
 - a. The affected item adjustments must be clearly labeled “Part II, Affected Items.”
 - b. The schedule of adjustments should be modified to describe a specific partner’s individual settlement of affected items.
 - c. If the applicability of penalties has been determined at the partnership level (for partnership tax years ending after August 5, 1997), but a partner has raised partner level defenses that cause the AO to waive all or a portion of the penalty, Part II of the schedule of adjustments should show the reduction of the penalty that will apply to the partner with a notation that the penalty is reduced because of a partner level determination.
 - d. If the CTF mails the settlement agreements, they must be uniform. They cannot be modified for different partners within the same partnership.
- (5) If a partner agrees to the adjustments to partnership items but does not agree to the affected item adjustments, the partner signs Part I and does not sign Part II. A statutory notice of deficiency is issued for the affected items.

8.19.1.7.11
(02-10-2009)
Closing Agreements

- (1) A closing agreement for a TEFRA partnership is made under the authority of IRC 6224(c) and IRC 7121.
Note: Whenever possible, avoid the use of closing agreements in the settlement of partnership items or affected items.
- (2) The closing agreement should identify both the partner and the partnership by name, address, and taxpayer identification number.
- (3) Refer to IRM 8.13.1, Processing Closing Agreements in Appeals, for detailed instructions on closing agreements (including their use in TEFRA partnership cases)

8.19.1.7.11.1
(10-01-2013)
Consistent Settlement

- (1) If the Service enters into a settlement agreement with any partner with respect to partnership items, IRC 6224(c)(2) requires the Service to offer the same settlement agreement to any other partner who requests it. The consistent settlement (also called consistent agreement or consistent treatment) requirement does not apply to affected items or to adjustments to non-TEFRA partnerships.
- (2) By statute the request must be made no later than the 150th day after the FPAA is mailed to the TMP. The regulations have allowed an additional period for making such requests. This period is 60 days after the date the settlement was entered into by the Commissioner. See *Treas. Reg. 301.6224(c)-3*.

- (3) A partner who receives a late NBAP or FPAA also has 45 days from the date the late notice was sent to request settlement terms consistent with any previous settlement. *Treas. Reg. 301.6223(e)-2*.
- (4) A partner requests consistent settlement by filing a written statement with the IRS office that entered into the settlement. The request must identify the specific settlement to which consistent settlement is requested.
- (5) When a consistent settlement is accepted by the Service, the agreement form should be marked "Consistent Settlement" to ensure that it is not treated as a new settlement, starting an additional 60 day period.
- (6) Refer to IRM 8.19.10.4.8.1 for additional information regarding consistent settlements .

8.19.1.7.12
(10-01-2013)
Dissenter's Rights

- (1) Every partner has the right to disagree with the Service's position.
- (2) Notice partners may dissent by filing a protest to a 60-day letter or petitioning a court after issuance of an FPAA.
- (3) Non-notice partners are bound by an agreement entered into by the TMP. See IRC 6224(c)(3)(A) and *Treas. Reg. 301.6224(c)-1(a)*. However, non-notice partners may affirmatively deny the TMP the right to bind them by forming a notice group (see IRM 8.19.1.6.7.1) or filing a statement with the Campus or IRS office that mailed the NBAP to the TMP as described in IRC 6224(c)(3)(B) and *Treas. Reg. 301.6224(c)-1(c)*. For these purposes, non-notice partners generally do not include indirect partners.

Caution: The TMP may only bind non-notice partners to partnership items (and partnership level determinations as to penalties for partnership tax years ending after August 5, 1997). The TMP cannot bind non-notice partners to any other affected items for any tax year.

- (4) Non-notice partners may form a 5-percent group for the sole purpose of filing a petition of an FPAA on behalf of the group.
 - a. The 5-percent group is a group of partners who for the partnership tax year involved had profits interest that aggregated 5 percent or more. See IRC 6231(a)(11).
 - b. A 5-percent group differs from a notice group. The designation of a partner as a representative of a notice group does not authorize that partner to petition an FPAA. A member of a notice group may choose not to join a 5-percent group formed by other members of the notice group. See *Treas. Reg. 301.6226(b)-1* and *Treas. Reg. 301.6223(b)-1(e)*.
 - c. Indirect partners may join a 5-percent group, even if they have not been identified as provided in IRC 6223(c)(3) and *Treas. Reg. 301-6223(c)-1*.
- (5) Indirect partners are bound by an agreement entered into by a pass-thru partner. See IRC 6224(c)(1) and *Treas. Reg. 301.6224(c)-2(a)*. However, an indirect partner is not bound by the pass-thru partner if it has been identified as provided in IRC 6223(c)(3) and *Treas. Reg. 301-6223(c)-1*. Linking indirect partners to a pass-thru partner on PCS does not constitute being "identified" for purposes of IRC 6223(c)(3) and *Treas. Reg. 301-6223(c)-1*.

Caution: A pass-thru partner may only bind an indirect partner to partnership items (and partnership level determinations as to penalties for partnership tax

years ending after August 5, 1997). A pass-thru partner cannot bind an indirect partner to other affected items for any tax year.

8.19.1.8
(10-01-2013)
**Special Interest Features
for TEFRA Partners**

- (1) For partnership tax years beginning before August 6, 1997, under IRC 6601(c) interest is not suspended after a partner enters into a TEFRA settlement. Interest continues until the deficiency is assessed. For partnership tax years beginning after August 5, 1997, interest is suspended 30 days after a partner enters into a TEFRA settlement; interest resumes after notice and demand.
- (2) For tax years ending after July 22, 1998, interest is suspended for a timely filed individual return if the Service fails to provide notice of the liability and the reason for the liability within a 36-month period (18 months effective for tax years where the 18-month period ended on or before November 25, 2007) beginning with the due date of the return (without extensions) or the filing date of the return, whichever is later. See IRC 6404(g). The interest suspension period ends 21 days after notice is given. For TEFRA partnerships, notice is deemed given to all partners when notice is given to the TMP. The earliest of the following provide IRC 6404(g) notice if the reason for the liability is given:
 - a. Form 5701
 - b. Summary Report
 - c. 60-day Letter
 - d. Appeals Settlement Letter
 - e. FPAA

Note: Even though the liability is not given to the partner, the partner can compute the liability from the adjustments to the partnership in each of the notices named above.

- (3) For purposes of IRC 6621(c), a notice of computational adjustment is the first notice that notifies a partner of an assessment of tax within the meaning of *Treas. Reg. 301.6621-3(c)(4)*. Accordingly, the additional 2% "hot interest" will be triggered 30 days after the mailing of the computational adjustment.

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Exhibit 8.19.1-1 (10-01-2013)

Glossary

Term	Description
Administrative Adjustment Request (AAR)	An AAR is a claim for refund or an amended return filed on Form 8082, Notice of Inconsistent Treatment or Amended Return notifying the IRS of a change to the treatment of a partnership item. The AAR may be filed by the TMP on behalf of the partnership generally as a substitute for return of the partnership, or it may be filed by a partner. The treatment of an item as requested in an AAR filed by a partner is not treated as a substitute return for the partnership. (I.R.C. §§ 6227 and 6228).
Affected Item	An affected item is any item on a partner's return that requires an adjustment as a result of adjustments made to partnership items. Some affected item adjustments are made as computational adjustments. For example, a change to a partnership item may change deductions allowable based on a percentage of adjusted gross income, such as medical expenses and charitable contributions. Some affected item adjustments, such as a change to a partner's basis in the partnership interest, may only be made if deficiency procedures are followed after the partnership items are resolved. For partnership tax years ending before August 6, 1997, the assertion of penalties may only be made in a deficiency proceeding. For partnership tax years ending after August 5, 1997, the applicability of the penalty is determined at the partnership level. Penalties are assessed as computational adjustments. The partner may assert partner level defenses in a refund proceeding.
Computational Adjustment	A computational adjustment is an adjustment to the tax liability of a partner in order to properly reflect the tax treatment of a partnership item. Computational adjustments can only be challenged on the computation and not the substance of the issue. The adjustments will usually arise from: Adjustments made to bring the treatment of a partnership item on the partner's return consistent with the treatment of the item on the partnership return; or Adjustments made to apply the results of a unified proceeding to a partner.

Exhibit 8.19.1-1 (Cont. 1) (10-01-2013)

Glossary

Term	Description
Final Partnership Administrative Adjustment (FPAA)	An FPAA is the functional equivalent of a statutory notice of the results of a partnership proceeding. An FPAA is subject to judicial review at the partnership level. It does not reflect the changes to the partner's tax liability as a result of partnership adjustments.
Five Percent Group	A five percent group is a group of partners collectively owning a five percent or more interest in the partnership. The group is formed solely for the purpose of filing a petition for judicial review. It may also seek appellate review of a court determination. A five percent group is distinct from a "notice group" which is also comprised of partners collectively holding a five percent interest.
Inconsistent Treatment	All partners are required to report the treatment of a partnership item on their own return in a manner which is consistent with the treatment of such item on the partnership return unless the partner notifies the Secretary of the inconsistency. This notification is made by filing a Form 8082, Notice of Inconsistent Treatment when the partner's return is filed.
Indirect Partner	An indirect partner is any person holding an interest in a partnership through one or more pass-thru partners.
Investor	A partner, shareholder, or beneficiary that is not a pass-thru entity. A tax return of a non-pass-thru entity is referred to as an investor return. The investor return of a partner who is an individual is a Form 1040 (U.S. Individual Income Tax Return). The investor return of a partner that is a C corporation is a Form 1120 (U.S. Corporation Income Tax Return).
Key Case	A tax return that results in pass-thru items to partners, shareholders, beneficiaries, or investors. The term includes Form 1065, Form 1120S, and Form 1041.
Non-notice Partner	A partner to whom the Service is not required to send notices. For example, the Service is not required to mail notices to a partner who owns less than 1% interest in a partnership that has over 100 partners unless the partner is identified according to the regulations.

Exhibit 8.19.1-1 (Cont. 2) (10-01-2013)

Glossary

Term	Description
Nonpartnership Item	A nonpartnership item is any item that is either not a partnership item or ceases to be a partnership item under circumstances identified in IRC 6231(b).
Notice of Beginning of Administrative Proceedings (NBAP)	The NBAP is the required notice sent to the TMP and all notice partners or groups which officially begins the examination of the partnership return under the unified proceedings.
Notice Group	A notice group is a group of partners collectively owning five percent or more of a partnership having more than 100 partners. The group is formed solely for the purpose of receiving the notices required by the statute directly from the Service (i.e., the NBAP and the FPAA).
Notice Partner	<p>A notice partner is any identified partner in a partnership with 100 or fewer partners. In a partnership with more than 100 partners, it is any partner (both direct and indirect) with a one percent or more profit interest in a partnership whose interest in the partnership has been properly identified to the Service. Additionally, a representative from a notice group is treated as a notice partner.</p> <p>Notice partners are entitled to receive notice of the beginning of partnership proceeding (NBAP) and the notice of final partnership administrative adjustment (FPAA) directly from the Service (rather than through the TMP or pass-thru partner).</p>
Partner	A person who owns an interest in a partnership and a person whose income tax liability is determined in whole or in part by taking into account directly or indirectly partnership items of the partnership.
Partnership	A partnership is any syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation, trust, estate or small partnership. (Note, a joint undertaking of two or more persons merely to share expenses is not a partnership).

Exhibit 8.19.1-1 (Cont. 3) (10-01-2013)**Glossary**

Term	Description
Partnership Item	A partnership item is any item required to be taken into account for the partnership's tax year to the extent regulations provide that such item is more appropriately determined at the partnership level rather than at the partner level.
Pass-thru Partner	A pass-thru partner is any partnership, estate, trust, electing small business corporation, nominee, or other similar person through whom other persons hold an interest in the partnership.
Real Estate Mortgage Investment Conduit (REMIC)	A REMIC is an entity created by the Tax Reform Act of 1986 (see IRC 860A through IRC 860G) to which the unified partnership provisions under IRC 6221 etc., will apply (see IRC 860F(e)). In general, a REMIC is a fixed pool of mortgages with multiple classes of interests held by partners.
Tier	A tier is a pass-thru entity that is a partner, shareholder, or beneficiary of a pass-thru entity. For example, a partnership that owns an interest in another partnership is a tier.

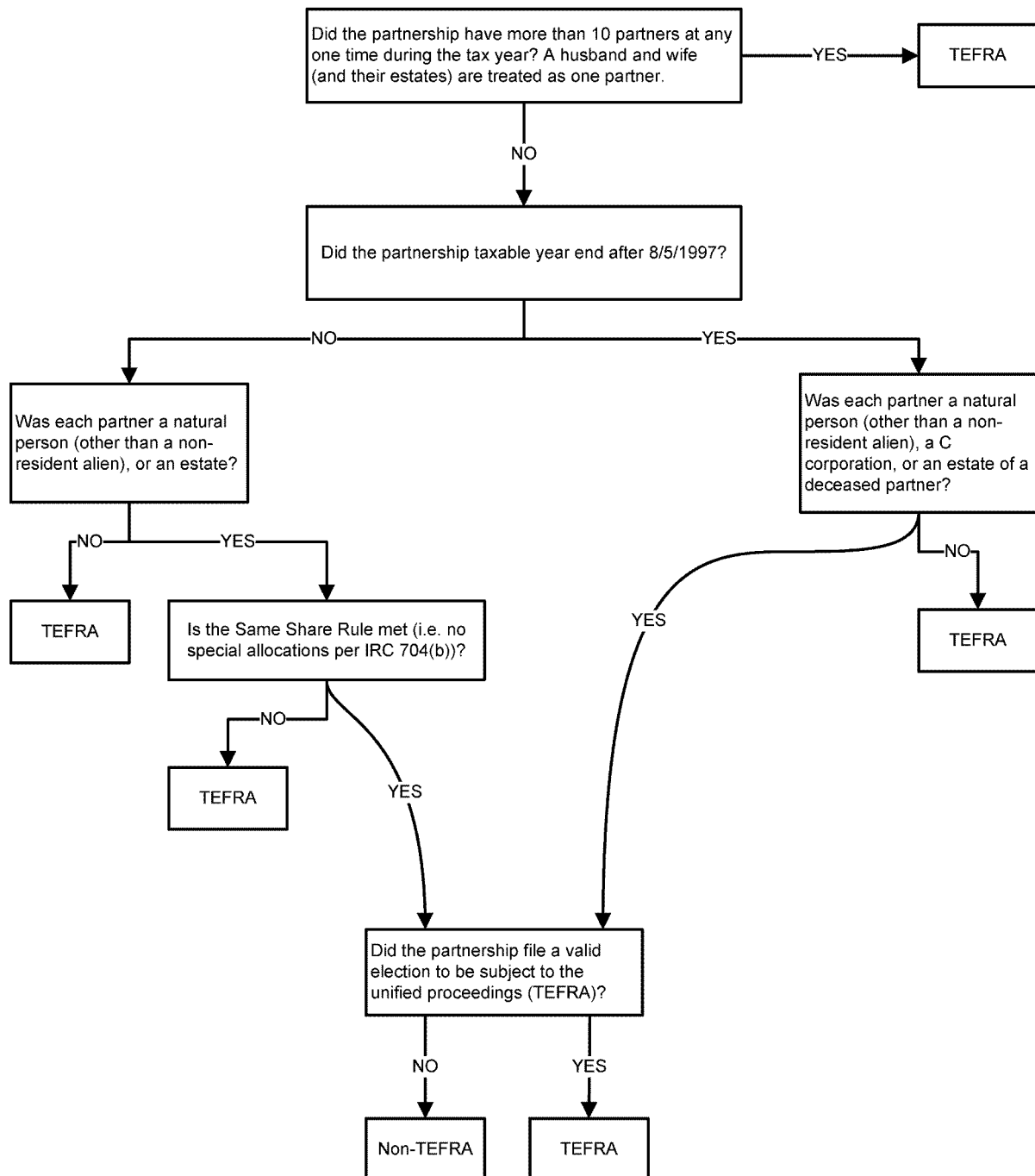
Exhibit 8.19.1-2 (10-01-2013)**Identification of TEFRA Partnership and Small Partnership Exception Flowchart****Exhibit 8.19.1-2****Identification of a TEFRA Partnership and the Small Partnership Exception**

Exhibit 8.19.1-3 (10-01-2013)**Document Locator Number (DLN)**

Document Locator Number (DLN)
29216-125-00040-1

The fourth and fifth digits of the DLN contain the document code for the type of return that was filed.

Document Locator Number							
DLN	29	2	16	125	000	40	1
Description	File Location Code	Tax Class	Document Code	Julian Date	Block Number	Serial Number	List (Processing) Year
Position	1 2	3	4 5	6 7 8	9 10 11	12 13	14

MFT Code	DOC Code	Explanation
02	10, 11	Form 1120, U.S. Corporate Income Tax Return
02	16	Form 1120-S, U.S. Small Business Corporate Income Tax

Exhibit 8.19.1-4 (10-01-2013)**Form 870-PT(AD) Schedule of Adjustments**

Department of the Treasury - Internal Revenue Service			
Settlement Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts			
SCHEDULE OF ADJUSTMENTS			
NAME OF PARTNERSHIP	TAX YEAR(S) ENDED		
Violet Partnership	12/31/2009		
EIN: Y2-0123456			
DETAIL OF ADJUSTMENTS TO ORDINARY INCOME			
Gross Receipts	\$33,000.00		
Depreciation	\$30,000.00		
Repair Expense	\$1,000.00		
TOTAL ADJUSTMENTS TO ORDINARY INCOME	\$64,000.00		
OTHER ADJUSTMENTS			
A. Capital Contributions Made During the 2009 Year			
(1) ADJUSTMENT	\$500,000.00		
(2) AS REPORTED	\$600,000.00		
(3) CORRECTED	\$1,100,000.00		
B. Forgiveness of Debt Income			
(1) ADJUSTMENT	\$900,000.00		
(2) AS REPORTED	\$500,000.00		
(3) CORRECTED	\$1,400,000.00		
REMARKS			
Negligence penalty will be assessed.			
Partner-level defenses to the negligence penalty may be raised in a refund forum after the penalty is assessed.			

Exhibit 8.19.1-5 (10-01-2013)
Form 870-LT(AD) Schedule of Adjustments

Department of the Treasury - Internal Revenue Service			
Settlement Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts and Agreement for Affected Items			
SCHEDULE OF ADJUSTMENTS			
NAME OF PARTNERSHIP	TAX YEAR(S) ENDED		
Violet Partnership	12/31/2008		
EIN: XY-0123456			
DETAIL OF ADJUSTMENTS TO ORDINARY INCOME			
Part I: Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts			
Rent Expense	\$15,500.00		
TOTAL ADJUSTMENTS TO ORDINARY INCOME	\$15,500.00		
OTHER ADJUSTMENTS			
A. Portfolio Income - Interest Income			
(1) ADJUSTMENT	\$1,500,000.00		
(2) AS REPORTED	\$3,500,000.00		
(3) CORRECTED	\$5,000,000.00		
B. Capital Contributions Made During 2008			
(1) ADJUSTMENT	\$845,000.00		
(2) AS REPORTED	\$845,000.00		
(3) CORRECTED	\$0.00		
REMARKS			
It is determined that the \$1,000,000.00 note from Violet Partnership to Rose Bank is recharacterized from recourse to non-recourse.			
Negligence penalty will be assessed.			
Partner-level defenses to the negligence penalty may be raised in a refund forum after the penalty is assessed unless these defenses are waived in Part II.			
Part II: Affected Items			
Therefore, \$ _____ of the loss is deductible on the return of partner _____ because the partner has \$ _____ at-risk under IRC 465.			
This agreement waives the partner-level defenses to the negligence penalty. Page 4			
Form 870-LT(AD) (Rev. 3-2008) Catalog Number 30772P Department of the Treasury - Internal Revenue Service			

Note: Send each partner the same Part I: Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts as every other partner. However, in the example instance, the Part II: Affected Items information is private partner information. Each partner's Part II information should be individual. The information in Part II can be the same for all partners if it can be generic and not give specific information to one partner about another partner.

Exhibit 8.19.1-6 (10-01-2013)**Tier Entity as TMP**

Type of Entity	Who Performs TMP Duties	Signature Element	Example
TEFRA partnership	TMP of TEFRA partnership	[Tier Name], Tax Matters Partner of [Key Case Name], by [name of person], TMP of [Tier Name]	Y Partnership, Tax Matters Partner of X Partnership, by John Doe, Tax Matters Partner of Y Partnership
LLC classified as a TEFRA partnership	Manager of LLC under state law	[Tier Name], Tax Matters Partner of [Key Case Name] by [Name of Person], Manager of [Tier Name]	Y LLC, Tax Matters Partner of X Partnership, by John Doe, Manager of Y LLC
LLC classified as non-TEFRA partnership	Manager of LLC who is authorized under state law to act on behalf of the LLC	[Tier Name], Tax Matters Partner of [Key Case Name], by [Name of Person], Manager of [Tier Name]	Y LLC, Tax Matters Partner of X Partnership, by John Doe, Manager of Y LLC
LLC classified as corporation	Manager of LLC who is authorized under state law to act on behalf of the LLC	[Tier Name], Tax Matters Partner of [Key Case Name], by [Name of Person], Title, [Corporation Name], Manager of [Tier Name]	Y LLC, Tax Matters Partner of X Partnership, by John Doe, CFO of Z Corporation, Manager of Y LLC
LLC classified as a disregarded entity	Manager of LLC who is authorized under state law to act on behalf of the LLC	[Tier Name], Tax Matters Partner of [Key Case Name], by [Name of Person], Manager and Sole-owner of [Tier Name]	Y LLC, Tax Matters Partner of X Partnership, by John Doe, Manager and Sole-owner of Y LLC
Non-TEFRA partnership	General partner of partnership who is authorized to act on behalf of the partnership	[Tier Name], Tax Matters Partner of [Key Case Name], by [name of person], General Partner of [Tier Name]	Y Partnership, Tax Matters Partner of X Partnership, by John Doe, General Partner of Y Partnership
Corporation	Officer of corporation	[Name of Corporation], Tax Matters Partner of [Key Case Name], by [Name of Person], Title of [Name of Corporation]	Y Corporation, Tax Matters Partner of X Partnership, by John Doe, CFO of Y Corporation
Trust	Trustee	[Trust Name], Tax Matters Partner of [Key Case Name], by [Name of Person], Trustee of [Trust Name]	Y Trust, Tax Matters Partner of X Partnership, by John Doe, Trustee of Y Trust

