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Cc:

Subject: RE: TEFRA questions

Section 6222(c)(2) allows us to assess the inconsistently reported item. We should do so within the applicable period for assessment. Taxpayer would then have to pay the tax and raise his passive loss carryforwards through a refund claim under section 6230(c)(1)(A)(i).

We could abate part of the assessment to the extent the partner substantiates the carryforward losses without the partner filing a refund claim and suit, but to the extent there is any disagreement on the amount of the abatement, he would have to pay the tax remaining in dispute and file his refund claim within 6 months of the initial assessment. I.R.C. 6230(c)(2)(A).

A deficiency notice should not be required under section 6230(a)(2) because the initial assessment is a purely computational matter based on his return and the partnership return as originally filed that does not require further "partner level determinations." A partner cannot create such "partner level determinations" after the fact, but can raise such issues as part of his refund claim after payment.

The burden is on the partnership to file a request for administrative adjustment under section 6227(d) to change the Schedule K-1 amounts. Absent such a filing, the procedure is for the taxpayer to pay the tax and file a refund claim under section 6230(c).

Section 6201(b) relating to estimated taxes has no application to this situation.