

ID: CCA_2014102110431801

[Third Party Communication:

UILC: 6230.01-00

Date of Communication: Month DD, YYYY]

Number: **201447037**

Release Date: 11/21/2014

From: [REDACTED]

Sent: Tuesday, October 21, 2014 10:43:18 AM

To: [REDACTED]

Cc: [REDACTED]

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Subject: RE: SNOD on Affected Item to a C/B year

The carryback can be directly assessed to the extent it is purely computational based on the amount of the partnership losses in and , without regard to whether it is passive or not.

NOL carryovers are computational adjustments that generally may be directly assessed. Thus, they are generally not subject to affected item deficiency procedures. At least three courts have so held. The cases are Cummings v. Commissioner, T.C. Memo. 1996-282; Bob Hambric Chevrolet v. U.S., 849 F.Supp 500 (Wd Tex. 1994); Olson v. U.S., 172 F.3d 1311, 83 A.F.T.R.2d 99-759, 99-1 USTC P 50,241 (Fed.Cir. Feb 08, 1999), affirming 37 Fed.Cl. 727, 79 A.F.T.R.2d 97-2175, 97-1 USTC P 50,375 (Fed.Cl. Apr 21, 1997).

To the extent the computational adjustment allows some of the NOL to survive, and the passive loss rules are then applied to eliminate the remaining amount, affected item deficiency procedures apply to disallow this remaining amount. Specifically, the notice of deficiency would determine that the partner did not materially participate and any other limitation on passive losses. I.R.C. 6230(a)(2)(A)(i)