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From: [redacted]
Sent: Thursday, January 11, 2024 9:03:00 AM
To: [redacted]
Cc:
Bcc:
Subject: RE: BBA question

Adjustments can be added to the FPA that were not included in the NOPPA. Section 6235 provides the period of limitations for making adjustments (not assessments) to a partnership subject to BBA. As long as the section 6235 period of limitations for making adjustments remains open, the IRS may make adjustments. Issuing a NOPPA does not stop the period of limitations for making adjustments to PRIs. See I.R.C. § 6235. Rather, the section 6235 period of limitations extends beyond the issuance of the NOPPA, allowing the IRS to make adjustments after mailing the NOPPA. I.R.C. § 6235(a).

The FPA makes adjustments and asserts the applicability of any penalties on those adjustments. This is similar to a notice of final partnership administrative adjustment (FPAA) under TEFRA or a section 6212(a) notice of deficiency. See Clovis I v. Commissioner, 88 T.C. 980, 982 (1987) (the FPAA is to TEFRA litigation what the statutory notice of deficiency is to tax controversies under section 6213). The NOPPA includes only proposed, not final, adjustments. See I.R.C. § 6231; Treas. Reg. § 301.6231-1(a)(2). Although BBA requires the IRS to issue a NOPPA prior to issuing an FPA, BBA does not require the IRS to propose every adjustment prior to finally determining all adjustments. See I.R.C. § 6231; Treas. Reg. § 301.6231-1(a)(2). Therefore, there is no problem including the QBI adjustment in the FPA.

I note that the QBI adjustment could change the amount of the imputed underpayment (IU). The IU is calculated on adjustments to partnership-related items (PRIs). A PRI is any amount on/required to be on the Form 1065 or required to be maintained in the partnership's books and records that is relevant to determining the chapter 1 tax liability under the Code. QBI meets this definition and is a PRI. Under section 6225(a) "[i]n the case of any adjustments by the Secretary to any [PRI] . . . such adjustments result in an [IU] . . . ." Therefore, the QBI adjustment would be included in the calculation of the IU. Because an adjustment is not an increase to an item of income, decrease in an item of expense, or an increase to a credit, it is a positive adjustment. Treas. Reg. 301.6225-1(d)(2)(iii). Positive adjustments increase the IU. However, under section 301.6225-1(b)(4) the IRS may treat the WBI adjustment as zero, solely for purposes of calculating the IU, if it determines the QBI adjustment is sufficiently reflected in one or more other adjustments.

Please let me know if you have any questions.

Thanks,
Jenni

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