

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1 and 301**

[REG–136118–15, REG–119337–17; REG–118067–17; REG–120232–17 and REG–120233–17]

RIN 1545–BO03; 1545–BO04

**Centralized Partnership Audit Regime**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking; notice of public hearing; withdrawal and partial withdrawal of notices of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations implementing the centralized partnership audit regime. This document withdraws and repropose certain portions of proposed regulations implementing the centralized partnership audit regime that have not been finalized to reflect the changes made by the Technical Corrections Act of 2018, contained in Title II of the Consolidated Appropriations Act of 2018 (TTCA). The proposed regulations affect partnerships with respect to partnership taxable years beginning after December 31, 2017, as well as partnerships that make the election under the Bipartisan Budget Act of 2015 (BBA), to apply the centralized partnership audit regime to partnership taxable years beginning on or after November 2, 2015 and before January 1, 2018.

**DATES:** Written or electronic comments must be received by October 1, 2018. Outlines of topics to be discussed at the public hearing scheduled for October 9, 2018, at 10 a.m. must be received by October 1, 2018.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–136118–15), Room 5207, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–136118–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG–136118–15).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations under sections 6221, 6226, 6235, and 6241, Jennifer M. Black of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–6834;

concerning the proposed regulations under sections 6225, 6231, and 6234, Joy E. Gerdy-Zogby of the Office of Associate Chief Counsel (Procedure and Administration), (202) 317–6834; concerning the proposed regulations under sections 6222, 6227, 6232, and 6233, Steven L. Karon of the Office of Associate Chief Counsel (Procedure and Administration), (202) 217–6834; concerning the proposed regulations under section 6225 relating to creditable foreign tax expenditures, Larry R. Pounders, Jr. of the Office of Associate Chief Counsel (International), (202) 317–5465; concerning the proposed regulations relating to chapters 3 and 4 of subtitle A of the Internal Revenue Code (other than section 1446), Subin Seth of the Office of Associate Chief Counsel (International), (202) 317–5003; concerning the proposed regulations relating to section 1446, Ronald M. Gootzeit of the Office of Associate Chief Counsel (International), (202) 317–4953; concerning the proposed regulations under sections 704 through 706 and §§ 301.6225–4 and 301.6226–4, Allison R. Carmody or Meghan M. Howard of the Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 317–5279; concerning the submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains proposed regulations under sections 704 through 706 to amend the Income Tax Regulations (26 CFR part 1) under Subpart—Partners and Partnerships and proposed regulations under sections 6221 through 6241 to amend the Procedure and Administration Regulations (26 CFR part 301) under Subpart—Tax Treatment of Partnership Items to implement the centralized partnership audit regime enacted by section 1101 of the BBA, Public Law 114–74 (BBA), as amended by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113 (PATH Act) and sections 201 through 207 of the TTCA, Public Law 115–141. This document also withdraws portions of proposed regulations under sections 704 through 706 and 6221 through 6241 that were published in the **Federal Register** on June 14, 2017 (REG–136118–15, 82 FR 27334), November 30, 2017 (REG–119337–17, 82 FR 56765), December 19, 2017 (REG–120232–17 and REG–120233–17, 82 FR 27071), and February 2, 2018 (REG–118067–17, 83 FR 4868).

Section 1101(a) of the BBA removed subchapter C of chapter 63 of the Internal Revenue Code (Code) effective for partnership taxable years beginning after December 31, 2017. Subchapter C of chapter 63 of the Code (subchapter C of chapter 63) contained the unified partnership audit and litigation rules that were commonly referred to as the TEFRA partnership procedures or simply TEFRA. Section 1101(b) of the BBA also removed subchapter D of chapter 63 of the Code and part IV of subchapter K of chapter 1 of the Code, rules applicable to electing large partnerships, effective for partnership taxable years beginning after December 31, 2017. Section 1101(c) of the BBA replaced the TEFRA partnership procedures and the rules applicable to electing large partnerships with a centralized partnership audit regime that, in general, determines, assesses, and collects tax at the partnership level.

On December 18, 2015, section 1101 of the BBA was amended by the PATH Act. The amendments under the PATH Act are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

On June 14, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 27334) a notice of proposed rulemaking (REG–136118–15) (June 2017 NPRM) proposing rules under section 6221 regarding the scope and election out of the centralized partnership audit regime, section 6222 regarding consistent treatment by partners, section 6223 regarding the partnership representative, section 6225 regarding partnership adjustments made by the IRS and determination of the amount of the partnership's liability (referred to as the imputed underpayment), section 6226 regarding the election for partners to take partnership adjustments into account, section 6227 regarding administrative adjustment requests (AARs), and section 6241 regarding definitions and special rules. The Treasury Department and the IRS received written public comments in response to the regulations proposed in the June 2017 NPRM, and a public hearing regarding the proposed regulations was held on September 18, 2017.

On November 30, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 56765) a notice of proposed rulemaking (REG–119337–17) (November 2017 NPRM) proposing rules regarding international provisions under the centralized partnership audit regime, including rules relating to the withholding of tax

on foreign persons, the withholding of tax to enforce reporting on certain foreign accounts, and the treatment of creditable foreign tax expenditures of a partnership. No written comments were submitted in response to this NPRM, and no hearing was requested or held.

On December 19, 2017, the Treasury Department and the IRS published in the **Federal Register** (82 FR 27071) a notice of proposed rulemaking (REG-120232-17 and REG-120233-17) (December 2017 NPRM) proposing administrative and procedural rules under the centralized partnership audit regime, including rules addressing assessment and collection, penalties and interest, periods of limitations on making partnership adjustments, and judicial review of partnership adjustments. The regulations proposed in the December 2017 NPRM also provided rules addressing how pass-through partners take into account adjustments under the alternative to payment of the imputed underpayment described in section 6226 and under rules similar to section 6226 when a partnership files an AAR under section 6227. Written comments were received in response to the December 2017 NPRM. However, no hearing was requested or held.

On January 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (82 FR 28398) final regulations under section 6221(b) providing rules for electing out of the centralized partnership audit regime.

On February 2, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 4868) a notice of proposed rulemaking (REG-118067-17) (February 2018 NPRM) proposing rules for adjusting tax attributes under the centralized partnership audit regime. Written comments were received in response to the February 2018 NPRM. However, no hearing was requested or held.

On March 23, 2018, Congress enacted the TTCA, which made a number of technical corrections to the rules under the centralized partnership audit regime. The amendments under the TTCA are effective as if included in section 1101 of the BBA, and therefore, subject to the effective dates in section 1101(g) of the BBA.

On August 9, 2018, the Treasury Department and the IRS published in the **Federal Register** (83 FR 39331) final regulations under section 6223 providing rules relating to partnership representatives and final regulations under § 301.9100-22 providing rules for electing into the centralized partnership audit regime for taxable years beginning on or after November 2, 2015 and before

January 1, 2018. Corresponding temporary regulations under § 301.9100-22T were also withdrawn.

In light of the technical corrections made by the TTCA, to the extent regulations have not already been finalized, this document withdraws the regulations proposed in the June 2017 NPRM, the November 2017 NPRM, the December 2017 NPRM, and the February 2018 NPRM (collectively, the prior NPRMs) and proposes regulations reflecting the technical corrections made by the TTCA. The regulations proposed in this document also include clarifications, unrelated to the TTCA as discussed in the Explanation of Provisions section of this preamble. In addition, certain regulations have been reordered and renumbered, typographical errors have been corrected, nonsubstantive editorial changes have been made, and the applicability date provisions in the regulations have been revised to replace references to § 301.9100-22T with references to § 301.9100-22. Finally, the assumed highest rate of tax for corporations in the examples for all applicable periods is now 20 percent to more closely reflect the corporate tax rate in effect under section 11 (as amended by section 13001 of “[a]n Act to provide for the reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” Public Law 115-97 (the “Act”)).

Although this document withdraws the prior NPRMs, the Explanation of Provisions sections contained in the preambles of the withdrawn NPRMs remain relevant. Therefore, to the extent not inconsistent with the Explanation of Provisions section of this preamble or the preamble to the portions of the proposed regulations that have already been finalized, those Explanation of Provision sections are incorporated by reference in this document. **Federal Register** citations are provided to assist with locating the relevant section of the preamble in the prior NPRMs. The prior NPRMs are also included in the rulemaking docket for this notice of proposed rulemaking on [www.regulations.gov](http://www.regulations.gov).

This document does not address written comments that were submitted in response to the regulations proposed in the prior NPRMs or respond to any statements made during the public hearing held on September 18, 2017. Except to the extent that the written comments relate to the final regulations under section 6221(b) and section 6223, such comments and any comments received in response to this notice of proposed rulemaking will be addressed

when the regulations proposed in this document are finalized.

## Explanation of Provisions

### 1. Scope of the Centralized Partnership Audit Regime and Partnership-Related Item

Section 6221(a) provides for the determination of certain adjustments at the partnership level under the centralized partnership audit regime. Prior to amendment by the TTCA, section 6221(a) provided that any adjustment to items of income, gain, loss, deduction, or credit of a partnership for a partnership taxable year (and any partner's distributive share thereof) shall be determined, any tax attributable thereto shall be assessed and collected, and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to any such item or share shall be determined at the partnership level. Prior to amendment by the TTCA, section 6241(a)(2) provided that the term “partnership adjustment” meant any adjustment in the amount of any item of income, gain, loss, deduction, or credit of a partnership, or any partner's distributive share thereof.

Section 201(c)(2) of the TTCA amended section 6221(a) by replacing the phrase “items of income, gain, loss, deduction, or credit of a partnership for a partnership taxable year (and any partner's distributive share thereof)” with the phrase “a partnership-related item.” Section 6221(a) now provides that any adjustment to a partnership-related item and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to any partnership-related item shall be determined at the partnership level. Additionally, section 6221(a) provides that any tax attributable to an adjustment to a partnership-related item shall be assessed and collected at the partnership level.

Section 201(a) of the TTCA amended section 6241(2) to provide that the term “partnership adjustment” means any adjustment to a partnership-related item, and the term “partnership-related item” means any item or amount with respect to the partnership (without regard to whether or not such item or amount appears on the partnership's return and including an imputed underpayment and any item or amount relating to any transaction with, basis in, or liability of, the partnership) which is relevant (determined without regard to subchapter C of chapter 63) in determining the tax liability of any person under chapter 1 of the Code

(chapter 1) and any partner's distributive share thereof.

By eliminating the reference to items of income, gain, loss, deduction, or credit of a partnership, and instead referring to partnership-related items, which is broadly defined, the amendments by the TTCA clarify that the scope of the centralized partnership audit regime is not narrower than the scope of the partnership audit procedures under TEFRA. Joint Comm. on Taxation, JCX-6-18, *Technical Explanation of the Revenue Provisions of the House Amendment to the Senate Amendment to H.R. 1625 (Rules Committee Print 115-66)*, 37 (2018) (JCX-6-18). Rather, the centralized partnership audit regime is intended to have a scope sufficient to address those items that would have been considered partnership items, affected items, and computational adjustments under TEFRA, including the regulations. *Id.*

#### A. Proposed § 301.6221(a)-1

Proposed rules under § 301.6221(a)-1 were previously published in the **Federal Register** (82 FR 27372-73) in the June 2017 NPRM and the November NPRM (82 FR 56776) (former proposed § 301.6221(a)-1). Former proposed § 301.6221(a)-1(a) provided that the centralized partnership audit regime covers any adjustment to items of income, gain, loss, deduction, or credit of a partnership and any partner's distributive share of those adjusted items. Former proposed § 301.6221(a)-1(b)(1)(i) defined the phrase "items of income, gain, loss, deduction or credit" to mean all items and information required to be shown, or reflected, on a return of the partnership under section 6031, the regulations thereunder, and the forms and instructions prescribed by the IRS for the partnership's taxable year, and any information in the partnership's books and records for the taxable year. In addition, former proposed § 301.6221(a)-1(b)(1)(ii) provided that any factors that needed to be taken into account to determine or allocate the tax treatment of items adjusted under the centralized partnership audit regime were also to be determined at the partnership level. Former proposed § 301.6221(a)-1(b)(2) also addressed items included within the phrase "partner's distributive share." Because the TTCA's amendment of the scope of the centralized partnership audit regime is accomplished by adding a new defined term—"partnership-related item"—the majority of the rules under former proposed § 301.6221(a)-1(b) that addressed the scope of what is adjusted at the partnership level are now

incorporated into proposed § 301.6241-6 which defines the term "partnership-related item."

Proposed § 301.6221(a)-1(a) now provides the general rule that, except as otherwise provided under the centralized partnership audit regime, any adjustments to partnership-related items and the applicability of any penalty, addition to tax, or additional amount that relates to an adjustment to any such items are determined at the partnership level. In addition, proposed § 301.6221(a)-1(a) provides that any chapter 1 tax attributable to an adjustment to a partnership-related item is assessed and collected at the partnership level. See section 13 of the preamble for a discussion of special enforcement matters pertaining to partnership-related items that may be adjusted outside of the centralized partnership audit regime.

Proposed § 301.6221(a)-1(a) further provides that any consideration necessary to make a determination at the partnership level under the centralized partnership audit regime is made at the partnership level. This would include the period of limitations on making adjustments under section 6235 as well as any facts necessary to calculate any imputed underpayment under section 6225, except as otherwise provided under the centralized partnership audit regime. These determinations previously constituted factors described under former proposed § 301.6221(a)-1(b)(1)(ii)(F) and (I).

#### B. Proposed § 301.6241-6

Proposed § 301.6241-6 defines the term "partnership-related item." Proposed § 301.6241-6(a) provides the general rule that a partnership-related item is any item or amount with respect to the partnership which is relevant in determining the tax liability of any person under chapter 1 and any partner's distributive share of any such item or amount.

Proposed § 301.6241-6(b) provides that an item or amount is with respect to a partnership without regard to whether or not such item or amount appears on the partnership return. An item or amount is with respect to a partnership if: The item or amount is shown or reflected, or required to be shown, or reflected, on a return of the partnership; the item or amount is in the partnership's books and records; the item or amount is an imputed underpayment; the item or amount relates to any transaction with, basis in, or liability of the partnership; or the item or amount relates to a transaction under section 707(a)(2), 707(b), or 707(c).

Under proposed § 301.6241-6(b)(4) and (7), an item or amount that relates to any transaction with, or liability of, the partnership, is with respect to a partnership only if the item or amount relates to a transaction or liability between the partnership and a partner acting in its capacity as a partner or an indirect partner (as defined in proposed § 301.6241-1(a)(4)) acting in its capacity as an indirect partner. Accordingly, an item or amount that relates to any transaction with or liability of the partnership is not with respect to the partnership if the item or amount is reported (or reportable) solely by a person other than the partnership, a partner not acting in its capacity as a partner, or an indirect partner not acting in its capacity as an indirect partner (except for transactions under section 707). Proposed § 301.6241-6(b)(8) provides that any determination necessary to make an adjustment to an item or amount described in proposed § 301.6241-6(b)(1) through (b)(7) is also an item or amount with respect to the partnership.

Proposed § 301.6241-6(c) provides that the determination of whether an item or amount is relevant in determining the tax liability of any person under chapter 1 is made without regard to the provisions of the centralized partnership audit regime. Proposed § 301.6241-6(c) also clarifies that an item or amount of a partnership is relevant in determining the liability of any person under chapter 1 without regard to whether such item or amount, or adjustment to such item or amount, has an effect on the tax liability of any particular person under chapter 1. Section 6241(2)(B)(i) does not limit whether an item is relevant in determining tax liability under chapter 1 to whether the item is relevant to determining the tax liability of a partner of the partnership under chapter 1. Rather, the statutory language refers to liability under chapter 1 of "any person." An item or amount is a partnership-related item if the item or amount is relevant in determining any person's liability under chapter 1 if the item might have any effect on any person's liability under chapter 1 regardless of whether it actually does have such an effect. Consequently, the IRS is not required to determine if an adjustment would have an actual effect on any person's chapter 1 liability under the Code.

Proposed § 301.6241-6(d) provides a list of examples of partnership-related items. These examples are largely the same as the items described in former proposed § 301.6221(a)-1(b)(1) with a few minor revisions. First, the

references to “foreign,” “tax,” and “§ 1.704–1(b)(4)(viii)(b)” in the example regarding creditable expenditures were removed to clarify that partnership-related item includes any creditable expenditures, not just a creditable foreign tax expenditure. Also, the “including . . .” phrase from each example was removed to be consistent with the broad scope of the centralized partnership audit regime and does not reflect a substantive change. No inference should be drawn from the removal of that language.

Proposed § 301.6241–6(e) provides examples that illustrate the rules under proposed § 301.6241–6.

## 2. Partner's Return Must Be Consistent With Partnership Return

Prior to enactment of the TTCA, section 6222 provided that a partner shall treat on the partner's return “each item of income, gain, loss, deduction, or credit attributable to a partnership” subject to subchapter C of chapter 63 in a manner that is consistent with the treatment of such item on the partnership return. Section 201(c) of the TTCA amended section 6222 to provide that a partner shall treat on the partner's return “any partnership-related item” in a manner which is consistent with the treatment of such item on the partnership return.

### A. Proposed § 301.6222–1

Proposed rules under § 301.6222–1 were previously published in the **Federal Register** (82 FR 27375–78) in the June 2017 NPRM (former proposed § 301.6222–1). For an explanation of the rules under former proposed 301.6222–1, see 82 FR 27345–46.

Former proposed § 301.6222–1(a) provided that a partner's treatment of each item of income, gain, loss, deduction, or credit attributable to a partnership must be consistent with the treatment of those items on the partnership return, including treatment with respect to the amount, timing, and characterization of those items. The reference in former proposed § 301.6222–1(a) to “each item of income, gain, loss, deduction, or credit attributable to a partnership” has been replaced with a reference to “any partnership-related item” to reflect the statutory change to section 6222(a). In addition, references throughout former proposed § 301.6222–1 to the term “item” have been replaced with references to the term “partnership-related item,” as appropriate.

### 3. Imputed Underpayment, Modification of Imputed Underpayment, and Adjustments That Do Not Result in an Imputed Underpayment

Section 6225 provides rules governing the determination of the imputed underpayment, modification of the imputed underpayment, and the treatment of adjustments that do not result in an imputed underpayment. Section 202(c) of the TTCA amended section 6225(a) to reflect the new term “partnership-related item” and to provide that in the case of adjustments to partnership-related items that result in an imputed underpayment the partnership shall pay an amount equal to the imputed underpayment in the adjustment year as provided in section 6232. In the case of adjustments that do not result in an imputed underpayment, such adjustments shall be taken into account by the partnership in the adjustment year.

Section 202(a) of the TTCA amended section 6225(b)(1) to provide that the Secretary shall determine any imputed underpayment with respect to any reviewed year by appropriately netting all partnership adjustments to such reviewed year and applying the highest rate of tax in effect for that year under section 1 or 11. Section 202(a) of the TTCA also amended section 6225(b)(2) to provide that in the case of any adjustment that reallocates the distributive share of any item from one partner to another, such adjustment shall be taken into account by disregarding so much of such adjustment as results in a decrease in the amount of the imputed underpayment.

Section 202(a) of the TTCA also added paragraphs (b)(3) and (b)(4) to section 6225. Section 6225(b)(3) provides that partnership adjustments for any reviewed year shall first be separately determined (and netted as appropriate) within each category of items that are required to be taken into account separately under section 702(a) or other provision of the Code. Section 6225(b)(4) provides if any adjustment would (but for section 6225(b)(4)) result in a decrease in the amount of the imputed underpayment, and could be subject to any additional limitation under the provisions of the Code (or not allowed, in whole or in part, against ordinary income) if such adjustment were taken into account by any person, such adjustment shall not be taken into account when appropriately netting partnership adjustments under section 6225(b)(1)(A) except to the extent otherwise provided by the Secretary.

Section 202(b) of the TTCA amended several provisions relating to modifications of imputed underpayments. Sections 6225(c)(3), (c)(4)(A), and (c)(5)(A)(i), which previously referred to the “portion of the imputed underpayment,” were amended to refer to the “portion of the adjustment.” This amendment clarifies that modifications under sections 6225(c)(3), (c)(4), and (c)(5) result in disregarding the portion of the partnership adjustment affected by the modification, rather than the portion of the imputed underpayment. Section 202(c) of the TTCA also added section 6225(c)(9), which provides that the Secretary shall establish procedures under which the adjustments described in section 6225(a)(2)—adjustments that do not result in an imputed underpayment—may be modified in such manner as the Secretary determines appropriate.

Section 203 of the TTCA amended section 6225(c)(2) relating to the procedures for partners to take adjustments into account during modification. Section 6225(c)(2)(A) governs the filing of amended returns by partners. Section 6225(c)(2)(B) provides for an alternative procedure to the filing of amended returns. Section 6225(c)(2)(C) provides rules for adjustments that reallocate the distributive share of any item from one partner to another. Section 6225(c)(2)(D) provides that sections 6501 and 6511 shall not apply in certain situations related to amended returns and the alternative procedure to filing amended returns. Section 6225(c)(2)(E) provides that any adjustments to tax attributes that occur as a result of a modification under section 6225(c)(2) are binding on the partners and the partnership. Section 6225(c)(2)(F) provides rules for tiered structures, including defining the term “relevant partner” to mean any partner in the chain of ownership of any partnerships that are partners in the partnership requesting modification.

### A. Proposed §§ 301.6225–1, 301.6225–2, and 301.6225–3

Proposed rules under §§ 301.6225–1, 301.6225–2, and 301.6225–3 were previously published in the **Federal Register** in the June 2017 NPRM (82 FR 27382–91), the November 2017 NPRM (82 FR 56776), and in the December 2017 NPRM (82 FR 60154) (collectively, former proposed §§ 301.6225–1, 301.6225–2, and 301.6225–3). For an explanation of the rules under former proposed §§ 301.6225–1, 301.6225–2, and 301.6225–3, see 82 FR 27350–58, 82 FR 56766–75, and 82 FR 60152–53.

Proposed § 301.6225-1 has been reorganized to clarify the process for determining an imputed underpayment. This reorganization, when compared to former proposed § 301.6225-1 (1) more clearly describes the steps necessary to determine an imputed underpayment and adjustments that do not result in an imputed underpayment; (2) consolidates rules regarding adjustments that do not result in an imputed underpayment; and (3) relocates rules regarding creditable expenditures to more clearly explain how to account for creditable expenditures in the determination of the imputed underpayment.

Proposed § 301.6225-1(b) addresses the calculation of the imputed underpayment. Due to the number of adjustments that could be made based on the definition of partnership-related item, the IRS will need to address circumstances in which multiple partnership-related items are adjusted to address a single issue or transaction in the administrative proceeding. Adjusting multiple partnership-related items that relate to the same issue or transaction could result in an imputed underpayment that double-counts some of the adjustments even though, if the partnership and partners had properly reported the item, one or more adjustments would have been subsumed by another item. To prevent double-counting the individual adjustments as inputs into the imputed underpayment, proposed § 301.6225-1(b)(4) provides that the IRS may treat adjustments that would otherwise be double-counted as zero for purposes of determining the imputed underpayment.

Proposed § 301.6225-1(c) describes the different groupings in which adjustments are placed for purposes of determining an imputed underpayment. These groupings are the reallocation grouping, the credit grouping, the creditable expenditure grouping, and the residual grouping. Proposed § 301.6225-1(c)(1) provides authority for the IRS to alter the manner in which adjustments are grouped to appropriately reflect the facts and circumstances.

Proposed § 301.6225-1(c)(2) defines the term “reallocation adjustment” and provides that in general reallocation adjustments are placed in the reallocation grouping. Under proposed § 301.6225-1(c)(3), however, reallocation adjustments to credits are placed in the credit grouping, and under § 301.6225-1(c)(4), reallocation adjustments to creditable expenditures are placed in the creditable expenditure grouping, similar to the rule under former proposed § 301.6225-1(d)(2)(iv). Proposed § 301.6225-1(c)(2)(ii) provides

that each reallocation adjustment results in two separate adjustments—one positive adjustment and one negative adjustment. Proposed § 301.6225-1(c)(6) provides similar rules for recharacterization adjustments.

Proposed § 301.6225-1(c)(5)(ii) provides rules for how to account for adjustments to partnership-related items that are not allocated by the partnership to its partners under section 704(b). Proposed § 301.6225-1(d)(2)(iii)(B) provides that adjustments to such items, solely for purposes of determining an imputed underpayment, are treated as a positive adjustment to income to the extent appropriate. The Treasury Department and the IRS request comments regarding how to treat recharacterization and reallocation adjustments related to items that are not allocated under section 704(b).

To incorporate the additions of sections 6225(b)(3) and (b)(4), proposed § 301.6225-1(d)(1) provides that when the IRS determines a negative adjustment (as defined in proposed § 301.6225-1(d)(2)(ii)), all partnership adjustments are placed into subgroupings based on whether the adjusted items are required to be taken into account separately under section 702 and other provisions of the Code. Proposed § 301.6225-1(d)(1) provides authority for the IRS to alter the manner in which adjustments are subgrouped to appropriately reflect the facts and circumstances.

Proposed § 301.6225-1(d)(2) provides for the treatment of certain partnership adjustments and defines the terms negative adjustment and positive adjustment. A negative adjustment is defined as an adjustment that is a decrease in an item of income, treated as a decrease in an item of income, or that is an increase in an item of credit. A positive adjustment is an adjustment that is not a negative adjustment. Proposed § 301.6225-1(d)(3) requires that positive and negative adjustments resulting from reallocation adjustments and recharacterization adjustments be placed into separate subgroupings.

Proposed § 301.6225-1(e) provides rules for appropriately netting adjustments within each grouping or subgrouping and provides that adjustments are not netted between groupings or subgroupings. The statutory changes referencing section 702(a) and other provisions of the Code and the general inability to net negative adjustments result in restrictions on netting in these proposed rules that are broader than the restrictions described in former proposed § 301.6225-1. The examples in the proposed rules have

been revised to reflect these broader restrictions on netting.

Proposed § 301.6225-1(f) provides rules related to determining whether adjustments are adjustments that do not result in an imputed underpayment. If the adjustments do not result in an imputed underpayment, such adjustments are taken into account in accordance with § 301.6225-3.

Proposed § 301.6225-1(g) provides the IRS may create multiple imputed underpayments for a particular tax year. Proposed § 301.6225-1(g)(2)(iii)(B) allows a particular adjustment that does not result in an imputed underpayment to be associated with a particular imputed underpayment. This rule ensures that adjustments that are appropriately associated with the imputed underpayment will be taken into account along with the other adjustments underlying the imputed underpayment if an election under section 6226 is made with respect to that imputed underpayment. For example, a reallocation or recharacterization adjustment generally results in more than one adjustment. In the case of a reallocation adjustment, there are adjustments that affect at least two partners. In a recharacterization adjustment, there is an adjustment to correct the characterization and an adjustment disallowing the incorrect characterization. As a result, if an adjustment that does not result in an imputed underpayment is due to a reallocation or recharacterization adjustment and one side of the adjustment is used to calculate a specific imputed underpayment, the other side of the adjustment, which is an adjustment that does not result in an imputed underpayment, is associated with that specific imputed underpayment.

The IRS may also determine that other adjustments that do not result in an imputed underpayment should be associated with a specific imputed underpayment. An adjustment that does not result in an imputed underpayment and that is not associated with a particular specific imputed underpayment is associated with the general imputed underpayment.

Proposed § 301.6225-2 provides guidance on procedures to modify the imputed underpayment. Former § 301.6225-2(b) provided that the effect of modification was determined by considering how the modification changed the relevant portion of the adjustment. This approach to modification is consistent with the amendments to section 6225(c). Accordingly, proposed § 301.6225-2(b)

reflects the rule that modification affects the portion of an adjustment.

Proposed § 301.6225-2(b)(3)(iv) provides rules on rate modification in the case of special allocations. Those rules generally mirror the statutory rule under section 6225(c)(4)(B)(ii). The rule in the statute is complex compared with other rate modifications in that they require a valuation analysis. The Treasury Department and the IRS request comments on ways to implement these rules efficiently.

Proposed § 301.6225-2(d)(2) provides rules regarding amended returns and the alternative procedure to filing amended returns. Proposed § 301.6225-2(d)(2) provides that a partnership may satisfy the requirements of amended return modification by submitting all the information required for amended return modification and the partners paying any amount that would be due if the partners had filed amended returns. The Treasury Department and the IRS request comments on how best to implement the alternative procedure to filing amended returns.

Former proposed § 301.6225-2(d)(2)(viii) provided that partners could raise a reasonable cause defense under section 6664(c) (or other partner-level defense as described in former proposed § 301.6226-3(i)(3)) with an amended return in modification. Proposed § 301.6225-2(d)(2)(viii) now provides that such partner-level defenses should be raised through a claim for refund that is submitted outside of the modification process. This rule is similar to the current rule regarding partner-level defenses related to adjustments that are taken into account by partners under section 6226. See proposed § 301.6226-3(d)(3).

Section 6225(c)(6) grants the Secretary authority to “by regulations or guidance provide for additional procedures to modify imputed underpayment amounts on the basis of such other factors as the Secretary determines are necessary and appropriate to carry out the purposes of this section.” The Treasury Department and the IRS have elected to use this authority in two circumstances that were not included in former proposed § 301.6225-2. First, the Treasury Department and the IRS have concluded that the references to the adjustment year in section 6225(c)(5) make the implementation of section 6225(c)(5) unworkable. No partner would qualify as a specified partner until the adjustment year, but at any time during the administrative proceeding that is relevant to modification, the adjustment year does not yet exist. As a result, the only time this type of modification could be used would be in the case of

an AAR because in that case, the adjustment year is the year in which the AAR is filed. In order for modification under section 6225(c)(5) to be administrable, proposed § 301.6225-2(d)(5)(iv) provides that a “qualified relevant partner” is a person that meets the definition of a specified partner but in a year that can be determined at the time modification is requested. The definition of a specified passive activity loss has also been changed to clarify that the years at issue do not have to be the adjustment year.

Second, the Treasury Department and the IRS are also exercising the authority under section 6225(c)(6) to add a modification for partnerships with partners entitled to benefits under an income tax treaty. Proposed § 301.6225-2(d)(9) allows modification if a relevant partner would have qualified for a reduction or exemption from tax with respect to a particular item under an income tax treaty with the United States. The Treasury Department and the IRS request comments on this type of modification.

Proposed § 301.6225-2(e) provides rules for modification of certain types of adjustments that do not result in an imputed underpayment (as defined in proposed § 301.6225-1(f)). Proposed § 301.6225-2(e) limits the ability to modify such adjustments to certain types of modification. The Treasury Department and the IRS request comments on whether the list of allowed modifications under proposed § 301.6225-2(e) is sufficient.

Lastly, proposed § 301.6225-2 adopts the term “relevant partner” to describe any direct or indirect partner in the partnership seeking modification. See section 6225(c)(2)(F) and proposed § 301.6225-2(a).

Proposed § 301.6225-3 provides rules regarding adjustments that do not result in an imputed underpayment. The changes in the TTCA comport with former proposed § 301.6225-3, which required that the partnership take the adjustments that do not result in an imputed underpayment into account as separately stated or non-separately stated adjustments as appropriate.

#### B. Proposed § 301.6225-4

Proposed rules under § 301.6225-4 were previously published in the **Federal Register** (83 FR 4868-82) in the February 2018 NPRM (former proposed § 301.6225-4). For an explanation of the rules under former proposed § 301.6225-4, see 82 FR 4877.

Proposed § 301.6225-4 sets forth rules under which a partnership and its partners must adjust specified tax attributes to take into account

partnership adjustments and the partnership’s payment of an imputed underpayment. Changes have been made throughout former proposed § 301.6225-4 to conform to the changes to the definition of “tax attribute” under proposed § 301.6241-1(a)(10). See section 11.A of this preamble regarding the change to the definition of “tax attribute.” In addition, the definition of “specified tax attributes” in proposed § 301.6225-4(a)(2) now includes earnings and profits under section 312 in response to comments received concerning the effect of partnership adjustments on a corporate partner’s earnings and profits.

#### 4. Election for the Alternative to Payment of the Imputed Underpayment

Section 6226 provides an alternative to the general rule under section 6225(a)(1) that the partnership must pay an imputed underpayment. Under section 6226, the partnership may elect to have its reviewed year partners take into account adjustments made by the IRS and pay any tax due as a result of those adjustments. If this election is made, the reviewed year partners must pay any chapter 1 tax resulting from taking into account the adjustments, and the partnership is not required to pay the imputed underpayment.

Section 206(d) of TTCA amended section 6226(a) to clarify that if a partnership makes a valid election under section 6226 with respect to an imputed underpayment, no assessment of such imputed underpayment, levy, or proceeding in any court for the collection of such imputed underpayment shall be made against such partnership.

Section 206(e) of the TTCA amended section 6226(b)(1) to provide that when a partner takes into account the adjustments, the partner’s chapter 1 tax is adjusted by the aggregate of the “correction amounts” determined under section 6226(b)(2). After amendment by the TTCA, the correction amounts under section 6226(b)(2) are defined as the amounts by which the partner’s chapter 1 tax would increase “or decrease” for the partner’s first affected year if the partner’s share of the adjustments were taken into account for that year. The correction amounts are also the amount by which the partner’s chapter 1 tax would increase “or decrease” by reason of the adjustment to tax attributes for any intervening years. See section 6226(b)(2).

Section 204(a) of the TTCA added to the Code section 6226(b)(4), which provides that a partnership or S corporation that receives a statement under section 6226(a)(2) must file a

partnership adjustment tracking report with the IRS and furnish statements under rules similar to the rules of section 6226(a)(2). If the partnership or S corporation fails to furnish such statements, the partnership or S corporation must compute and pay an imputed underpayment under rules similar to the rules of section 6225. A partnership that is a partner must file the partnership adjustment tracking report, and furnish statements or pay an imputed underpayment, notwithstanding any election out of the centralized partnership audit regime under section 6221(b) by the partnership for the tax year that includes the end of the reviewed year of the audited partnership. The term “audited partnership” means the partnership in the chain of ownership that originally made the election under section 6226. See section 6226(b)(4)(D).

A. Proposed §§ 301.6226–1, 301.6226–2, and 301.6226–3

Proposed rules under §§ 301.6226–1, 301.6226–2, and 301.6226–3 were previously published in the **Federal Register** in the June 2017 NPRM (82 FR 27391–97), the November 2017 NPRM (82 FR 56778–79), and the December 2017 NPRM (82 FR 60155–61) (collectively, former proposed §§ 301.6226–1, 301.6226–2, and 301.6226–3). For an explanation of the rules under former proposed §§ 301.6226–1, 301.6226–2, and 301.6226–3, see 82 FR 27358–66, 82 FR 56769–71, and 82 FR 60148–51.

Former proposed § 301.6226–1(b)(2) provided that if a partnership makes a valid election in accordance with proposed § 301.6226–1, the partnership is not liable for the imputed underpayment to which the election relates. To reflect the statutory change to section 6226(a), language has been added to proposed § 301.6226–1(b)(2) to clarify that if a partnership makes a valid election under section 6226 with respect to an imputed underpayment, the IRS may not assess such imputed underpayment, levy, or bring a proceeding in any court for the collection of that imputed underpayment against such partnership. A similar change has also been made to proposed § 301.6226–1(c)(2) (regarding invalid elections) to clarify that if a final determination is made that a purported election under section 6226 is invalid, the IRS may assess the imputed underpayment with respect to which the election was made against the partnership without regard to the limitations under section 6232(b).

Former proposed § 301.6226–3 provided that a reviewed year partner

that is furnished a statement under section 6226(a)(2) is required to pay any additional chapter 1 tax (additional reporting year tax) that results from taking into account the partnership adjustments on that statement. As mentioned above in this section of the preamble, section 206(e) of the TTCA amended section 6226(b) to provide that decreases, as well as increases, in chapter 1 tax that result from taking into account partnership adjustments are used in computing a partner’s additional reporting year tax. Section 206(e) of the TTCA also replaced the term “adjustment amount” with “correction amount.” Accordingly, proposed § 301.6226–3 now refers to “correction amount” instead of “adjustment amount,” as appropriate, and now provides that a reviewed year partner’s chapter 1 tax for the reporting year may be increased or decreased by the additional reporting year tax. The additional reporting year tax is the sum of the correction amounts for the first affected year and any correction amounts for the intervening years. Under proposed § 301.6226–3(b)(2) and (3), the correction amounts are the amounts by which the partner’s chapter 1 tax for the taxable year would be increased or decreased if the partner’s taxable income for that year were recomputed by taking into account, in the case of the first affected year, the partner’s share of the partnership adjustments reflected on the statement furnished to the partner or, in the case of any intervening year, any change to tax attributes of the partner resulting from the changes in the first affected year. A correction amount for the first affected year or any intervening year may be less than zero and may be used to offset any correction amounts from any other year in computing the additional reporting year tax. The examples under proposed § 301.6226–3(h) illustrate situations in which a correction amount may be less than zero.

Furthermore, the additional reporting year tax may be less than zero and may offset other taxes owed by the partner on the partner’s reporting year return. Accordingly, any references to the additional reporting year tax as a “liability” have been removed from former proposed § 301.6226–3 to account for situations in which the additional reporting year tax is less than zero.

Section 6226(c)(2) provides that interest in the case of a section 6226 election is determined at the partner level, from the due date of the return for the taxable year to which the increase in chapter 1 tax is attributable, and at the

underpayment rate under section 6621(a)(2) (substituting 5 percent for 3 percent). As discussed above in this section of the preamble, the TTCA amended section 6226(b) to provide that both increases and decreases in chapter 1 tax are used in computing a partner’s additional reporting year tax. However, the TTCA did not similarly amend the reference to “increases” in section 6226(c)(2) with the result that interest only applies to the increases in the chapter 1 tax that would have resulted from taking into account the partnership adjustments under section 6226. No provision under the centralized partnership audit regime provides for interest in the case of a *decrease* in chapter 1 tax that would have resulted in the first affected year or any intervening year if the adjustments were taken into account in those years. Accordingly, proposed § 301.6226–3(c)(1) provides that interest on the correction amounts determined under proposed § 301.6226–3(b) is only calculated for taxable years for which there is a correction amount greater than zero, that is, taxable years for which there would have been an increase in chapter 1 tax if the adjustments were taken into account.

Proposed § 301.6226–3(c)(1) further provides that for purposes of calculating interest on the correction amounts, any correction amount that is less than zero does not offset any correction amount that is greater than zero. Although those amounts may offset when determining the additional reporting year tax (as described in proposed § 301.6226–3(b)), allowing the same offset for purposes of calculating interest is inconsistent with section 6226(c)(2), which provides that interest is determined with respect to any increase determined under section 6226(b)(2).

Proposed § 301.6226–3(d)(3) has also been clarified to provide that if a partner wants to raise a partner-level defense to any penalty, addition to tax, or additional amount, a partner must first pay the penalty, addition to tax, or additional amount and file a claim for refund for the reporting year in order to raise the defense.

As discussed above in this section of the preamble, section 204(a) of the TTCA amended section 6226(b) to provide that partnerships and S corporations that are direct or indirect partners in an audited partnership and that receive statements under 6226(a)(2) must file partnership adjustment tracking reports with the IRS and furnish statements to their owners under rules similar to section 6226. If no statements are furnished, the partnership or S corporation must



compute and pay an imputed underpayment.

Former proposed § 301.6226-3(e)(1) provided that a pass-through partner (as defined in proposed § 301.6241-1(a)(5)) that was furnished a statement described in proposed § 301.6226-2 (including a statement as described in former proposed § 301.6226-3(e)(3)) must take into account the adjustments reflected on that statement by either furnishing statements to its partners or by paying an amount calculated like an imputed underpayment. Any statements furnished under those provisions were treated as statements described in proposed § 301.6226-2, and any pass-through partner receiving a statement under former proposed § 301.6226-3(e)(3) was required to also take the adjustments reflected on the statement into account by furnishing statements to its own partners or paying an amount calculated like an imputed underpayment. See former proposed § 301.6226-3(e)(3)(i) and (iv).

Although the rules under former proposed § 301.6226-3(e) were largely consistent with the rules under section 6226(b)(4), some changes were needed to conform the two sets of rules. First, proposed § 301.6226-3(a)(1) now provides that the rules under proposed § 301.6226-3(a)(1) apply to a reviewed year partner except to the extent otherwise provided in proposed § 301.6226-3. Second, proposed § 301.6226-3(e) now includes a requirement that the pass-through partner must file a partnership adjustment tracking report. Third, proposed § 301.6226-3(e) provides a default rule that a pass-through partner must furnish statements to its own partners in accordance with proposed § 301.6226-3(e)(3). If a pass-through partner fails to furnish statements in accordance with proposed § 301.6226-3(e)(3), the pass-through partner must compute and pay an imputed underpayment. Additionally, language referring to a pass-through partner “taking into account” the adjustments under former proposed § 301.6226-3(e) was removed to more closely align with the statutory language in section 6226(b)(4). Fourth, proposed § 301.6226-3(e) defines and refers to the term “audited partnership,” which proposed § 301.6226-3(e)(1) defines as the partnership that made the election under § 301.6226-1. See section 6226(b)(4)(D). Lastly, proposed § 301.6226-3(e)(4) provides that the amount a pass-through partner must compute and pay, if it does not furnish statements to its partners, is an “imputed underpayment.” See section 6226(b)(4)(A)(ii)(II).

Because under proposed § 301.6226-3(e), pass-through partners compute and pay an “imputed underpayment,” rather than calculating correction amounts under proposed § 301.6226-3(b), references in former proposed § 301.6226-3(b) to amended returns filed by indirect partners as part of modification have been deleted. Pass-through partners computing an imputed underpayment under proposed § 301.6226-3(e) may account for modifications submitted by their indirect partners, but non-pass-through partners calculating correction amounts under proposed § 301.6226-3(b) cannot. Accordingly, the references in former proposed § 301.6226-3(b) to amended returns filed by indirect partners were removed.

To reflect the change to the definition of “tax attribute” under proposed § 301.6241-1(a)(10) (see section 11.A. of this preamble), proposed §§ 301.6226-2 and 301.6226-3 now only refer to the tax attributes of the partner. For example, proposed §§ 301.6226-2(e) and 301.6226-3(e)(3)(iii) no longer require that the audited partnership report any changes to *partnership* tax attributes on the statements furnished to its partners under section 6226(a)(2). Therefore, when a partner computes the partner’s correction amount for any intervening year, the partner calculates the amount by which the partner’s chapter 1 tax for any intervening year would increase or decrease if any tax attribute of that partner (for example, a net operating loss carryover or capital loss carryover) has been adjusted after taking into account the partner’s share of the adjustments in the first affected year.

Finally, references to “items” or “items of income, gain, loss, deduction, or credit” throughout former §§ 301.6226-1, 6226-2, and 6226-3 have been replaced with references to “partnership-related items.”

#### B. Revisions to the Regulations Under Section 6226 Unrelated to the TTCA Amendments

In addition to the changes needed to conform to the amendments by the TTCA, some additional changes have been made to former proposed §§ 301.6226-1, 6226-2, and 6226-3. First, proposed § 301.6226-1(b)(2) now provides that only those adjustments that do not result in an imputed underpayment which are associated with an imputed underpayment for which an election under section 6226 is made are included in the reviewed year partner’s share of the partnership adjustments reported to the partner. Any adjustments that do not result in an

imputed underpayment which are not associated with an imputed underpayment for which an election under section 6226 is made are taken into account under section 6225. This change was necessary to clarify which partnership adjustments are pushed out in the case of multiple imputed underpayments where the push out election is not made with respect to all imputed underpayments. See proposed § 301.6225-1(g) for rules regarding the treatment of adjustments that do not result in an imputed underpayment in the context of specific imputed underpayments.

Second, under proposed § 301.6226-1(c)(1), an election under section 6226 is only valid if all the provisions under proposed § 301.6226-1 (regarding making the election) and § 301.6226-2 (regarding the furnishing of statements) are satisfied, and an election made under section 6226 is valid until the IRS determines that the election is invalid. The rule that an election is valid until the IRS determines it is invalid was moved from former proposed § 301.6226-1(c)(2) to proposed § 301.6226-1(c)(1) to clarify that an election that does not fully satisfy the requirements of proposed §§ 301.6226-1 and 301.6226-2 is valid unless the IRS determines that the purported election is invalid. For example, if a partnership makes an election in accordance with proposed § 301.6226-1 but fails to furnish statements to its partners, that election is valid until the IRS determines otherwise.

In addition, the word “final” was removed from before the word “determination” in proposed § 301.6226-1(c)(2) when referring to a determination made by the IRS that a purported election under section 6226 is invalid. The removal of the word “final” clarifies that the IRS may determine that an election is invalid and assess and collect the imputed underpayment to which the purported election related without first being required to make a proposed or initial determination of invalidity. Although nothing in the regulations precludes the IRS from first notifying the partnership of a potential problem with an election before determining the election is invalid, proposed § 301.6226-1(c)(2) provides that the IRS may determine that an election is invalid even if the partnership has corrected the statements required to be filed and furnished in accordance with proposed § 301.6226-2(d)(3) and also provides that the IRS is not obligated to require the correction of any errors prior to determining an election is invalid.



Third, several changes were made to clarify that the partnership must provide correct information in order to make a valid election under section 6226 and in order for statements to be properly furnished either under proposed § 301.6226–2 or proposed § 301.6226–3(e)(3). Proposed § 301.6226–1(c)(4)(ii) requires the partnership to provide correct information in its election, and proposed § 301.6226–2(e) and proposed § 301.6226–3(e)(3)(iii) require that the statements filed and furnished with the IRS include correct information. Additionally, proposed § 301.6226–2(d)(3) provides that if the IRS cannot determine whether the statements filed and furnished by the partnership are correct because of a failure by the partnership to comply with any requirements (such as filing a partnership adjustment tracking report), the IRS may, but is not obligated to, require the partnership to provide additional information to substantiate the statements. Proposed § 301.6226–2(d)(2) extends the rules governing corrections of errors in statements to statements furnished by pass-through partners under proposed § 301.6226–3(e)(3) and to provide that, if consent of the IRS is required for a correction, that corrected statements may not be furnished until the IRS provides consent.

Fourth, duplicative language regarding the definition of the extended due date for the adjustment year of the audited partnership was removed from former proposed § 301.6226–3(e)(3)(ii) and (e)(4)(ii).

Fifth, in proposed § 301.6226–3(g), the word “grantor” has been added between the words “wholly-owned” and “trusts” to clarify that “wholly-owned trusts” means “wholly-owned grantor trusts.”

Sixth, the phrase “an entity described in § 301.7701–2(c)(2)(i)” in former proposed § 301.6226–3(j) was changed to “a wholly-owned entity disregarded as separate from its owner for Federal tax purposes in the reviewed year” to conform to the definition of disregarded entity under proposed § 301.6241–1(a)(4).

Seventh, proposed § 301.6226–3(c)(2) now provides that interest on any penalties, additions to tax, or additional amounts is calculated from each applicable taxable year until the penalty, addition to tax, or additional amount is paid. Former proposed § 301.6226–3(c)(2) provided that interest was calculated from the first affected year. Under proposed § 301.6226–3(d)(2), partners calculate any penalties, additions to tax, or additional amounts

that relate to the partnership adjustments at the partner level. Because the adjustments could create tax effects in more than just the first affected year (for example, as a result of changes to tax attributes in an intervening year), a penalty, addition to tax, or additional amount might likewise result in more than just the first affected year. Accordingly, proposed § 301.6226–3(c)(2) provides that interest on penalties, additions to tax, and additional amounts runs from the applicable taxable year (that is, the particular tax year to which the penalty, addition to tax, or additional amount relates).

Finally, certain errors were corrected in the examples under proposed § 301.6226–3(h). Examples 2 through 4 and 6 through 9 under former proposed § 301.6226–3(h) incorrectly listed the last day to file a petition under section 6234 as the date the adjustments became final, and examples 6 through 9 incorrectly referred to former proposed § 301.6226–1(b) as support for this rule. Under proposed § 301.6226–2(b), partnership adjustments become finally determined on the later of the expiration of the time to file a petition under section 6234 or, if a petition is filed under section 6234, the date when the court’s decision becomes final. The examples under proposed § 301.6226–3(h) now reflect that the adjustments become final on the day after the last day to file a petition under section 6234 to be consistent with the rule under § 301.6226–2(b), and incorrect references to § 301.6226–1(b) in Examples 6 through 9 under former proposed § 301.6226–3(h) have been replaced with correct references to § 301.6226–2(b).

Proposed § 301.6226–4

Proposed rules under §§ 301.6226–4 were previously published in the **Federal Register** in the February 2018 NPRM (83 FR 4868) (former proposed § 301.6226–4). For an explanation of the rules under former proposed § 301.6226–4, see 83 FR 4874.

Proposed § 301.6226–4 sets forth rules for adjusting reviewed year partners’ tax attributes to take into account partnership adjustments when a partnership makes an election under section 6226. To reflect the addition of section 6226(b)(4), proposed § 301.6226–3(e)(4) now provides that a reviewed year partner that is a pass-through partner must pay an imputed underpayment if the pass-through partner does not furnish statements. In addition, changes have been made throughout former proposed § 301.6226–4 to conform to the change

to the definition of “tax attribute” under proposed § 301.6241–1(a)(10). See section 11.A of this preamble. These changes reflect that the adjustments to tax attributes taken into account by a partner should be consistent, regardless of whether the partner files an amended return during modification, participates in the alternative procedure to filing an amended return, or receives a statement under section 6226. Accordingly, the proposed regulations under section 6226 have been revised to refer only to the tax attributes of the partner in the intervening years. Additionally, clarifying changes were made in proposed § 301.6226–4(b) to conform to the terminology used in proposed § 301.6226–3. Lastly, an incorrect cross-reference in former proposed § 301.6226–4(c)(4)(iii) has been replaced with the correct cross-reference.

##### 5. Administrative Adjustment Requests

Section 6227 provides a mechanism for a partnership to file an AAR to correct errors on a partnership return for a prior year. Prior to amendment by the TTCA, section 6227(a) provided that a partnership may file a request for administrative adjustment in the amount of one or more items of income, gain, loss, deduction, or credit of the partnership or any partnership taxable year. Section 201(c) of the TTCA amended section 6227(a) by striking “items of income, gain, loss, deduction, or credit of the partnership” and inserting “partnership-related items.”

Prior to amendment by the TTCA, section 6227(b) provided that any adjustment requested in an AAR is taken into account for the partnership taxable year in which the AAR is made. Section 206(p) of the TTCA amended section 6227(b) by striking “is made” both places it appears and inserting “is filed.”

Prior to amendment by the TTCA, section 6227(b)(1) provided that if an adjustment results in an imputed underpayment, the adjustment may be determined and taken into account by the partnership under rules similar to the rules under section 6225 relating to payment of the imputed underpayment by the partnership, except that the provisions under section 6225 pertaining to modification of the imputed underpayment based on amended returns by partners, the time for submitting information to the Secretary for purposes of modification, and approval by the Secretary of any modification do not apply.

Section 206(p) of the TTCA amended section 6227(b)(1) by striking the reference to “paragraphs (2), (6), and (7)” of section 6225(c) (relating to

modification) and inserting “paragraphs (2), (7), and (9)” of section 6225(c). As a result, section 6227(b)(1) provides that adjustments requested in an AAR are taken into account by the partnership under rules similar to section 6225 (except for sections 6225(c)(2), (7), and (9)). As amended by TTCA, section 6225(c)(2) provides rules allowing for amended returns and an alternative procedure to filing amended returns for purposes of modification, section 6225(c)(7) provides that information required to be submitted for purposes of modification be submitted within 270 days from the date on which the notice of a proposed partnership adjustment is mailed under section 6231, and section 6225(c)(9) provides for modification with respect to adjustments that do not result in an imputed underpayment.

Lastly, section 206(f) of the TTCA added section 6227(d) to provide that the Secretary shall issue regulations or other guidance which provide for the proper coordination of section 6227 and section 905(c).

A. Proposed §§ 301.6227–1, 301.6227–2, and 301.6227–3

Proposed rules under §§ 301.6227–1, 301.6227–2, and 301.6227–3 were previously published in the **Federal Register** (82 FR 27397–99) in the June 2017 NPRM, November 2017 NPRM (82 FR 56779), and December 2017 NPRM (82 FR 60161) (collectively, former proposed §§ 301.6227–1, 301.6227–2, and 301.6227–3). For an explanation of the rules under former proposed §§ 301.6227–1, 301.6227–2, and 301.6227–3, see 82 FR 27366–69, 82 FR 56769, and 82 FR 60151.

Former proposed § 301.6227–1(a) provided that a partner may not file an AAR except if the partner is doing so on behalf of the partnership in the partner’s capacity as the partnership representative or if the partner is a partnership-partner filing an AAR under former proposed § 301.6227–3(c). Proposed § 301.6227–3(c), however, does not provide for the filing of an AAR by a partnership-partner. Rather, under proposed § 301.6227–3(c), a partnership-partner takes into account adjustments requested in an AAR by the partnership in which it is a partner by following the rules under proposed § 301.6226–3(e) (except to the extent otherwise provided). Proposed § 301.6227–1(a) therefore is changed to remove the reference to partnership-partners, and now only refers to partners filing AARs in their capacity as a partnership representative.

Proposed § 301.6227–2(a)(1) provides the rules for determining whether an imputed underpayment results from

adjustments requested in an AAR by referring to the rules under proposed § 301.6225–1. Under proposed § 301.6227–2(a)(2), in the case of an AAR, a partnership may reduce an imputed underpayment as a result of certain modifications permitted under proposed § 301.6225–2. Under former proposed § 301.6227–2(a)(2), these modifications included modifications that relate to tax-exempt partners (proposed § 301.6225–2(d)(3)), rate modification (proposed § 301.6225–2(d)(4)), modification related to certain passive losses of publicly traded partnerships (proposed § 301.6225–2(d)(5)), modification applicable to qualified investment entities described in section 860 (proposed § 301.6225–2(d)(7)), and other modifications to the extent permitted under future IRS guidance (proposed § 301.6225–2(d)(10)). Proposed § 301.6227–2(a)(2) adopts this same list of modifications and adds modifications related to the composition of the groupings that factor into the calculation of the imputed underpayment (proposed § 301.6225–2(d)(6)(ii)) and modifications related to tax treaties (proposed § 301.6225–2(d)(9)).

Proposed § 301.6227–2(a)(2) provides that other types of modification, such as modification under proposed § 301.6225–2(d)(2) with respect to amended returns, including the alternative procedure to filing amended returns, and modification under proposed § 301.6225–2(d)(8) with respect to closing agreements, are not available in the case of an AAR. Modifications with respect to adjustments that do not result in an imputed underpayment also are not available in the case of an AAR.

Former proposed § 301.6227–2(a)(2)(i) provided that a partnership did not need to seek IRS approval prior to modifying an imputed underpayment that results from adjustments requested in an AAR. Section 6227(b)(1) does not explicitly carve out section 6225(c)(8), which states that any modification to the imputed underpayment made under section 6225(c) shall be made only upon approval of such modification by the Secretary. Section 6227(b)(1) does provide, however, that partnerships take into account adjustments requested in an AAR under rules similar to the rules under section 6225. In proposing rules similar to the rules under section 6225 for the purposes of requesting an AAR and taking into account adjustments, the Treasury Department and the IRS have determined it is more efficient and beneficial for both the IRS and for partnerships to be able to apply

modifications when filing an AAR without first securing approval of permitted modifications. Accordingly, although any modifications in connection with an AAR are subject to IRS approval, the rules under proposed § 301.6227–2(a)(2)(i) provide that the partnership is not required to obtain the approval from the IRS before applying modifications when calculating the amount of the imputed underpayment the partnership needs to pay when filing the AAR. Proposed § 301.6227–2(a)(2)(ii) also provides, however, that modifications to an imputed underpayment resulting from adjustments requested in an AAR may not be applied by the partnership if the AAR that is filed does not include notification to the IRS of the modification, a description of the effect of the modification on the imputed underpayment, an explanation of the basis for such modification, and all necessary documentation to support the partnership’s entitlement to such modification.

Under proposed § 301.6227–3, a reviewed year partner that receives a statement described in proposed § 301.6227–1(d) must treat that statement as if it were provided under section 6226(a)(2). Former proposed § 301.6227–3(b)(1) also provided that the restriction in former proposed § 301.6226–3(b)(1)—that the correction amount for the first affected year and any intervening year cannot be less than zero—does not apply in the case of taking into account adjustments requested by the partnership in an AAR. Proposed § 301.6227–3(b)(1) no longer needs to address that restriction because the restriction in former proposed § 301.6226–3(b)(1) no longer exists. Therefore, the exception in former proposed § 301.6227–3(b)(1) has been eliminated. Additionally, the provision in former proposed § 301.6227–3(b)(2), stating that when the additional reporting tax results in being less than zero the partner may reduce his chapter 1 tax for the reporting year, is moved to proposed § 301.6227–3(b)(1).

Former proposed § 301.6227–1 included a reserved paragraph regarding notice of change to amounts of creditable foreign tax expenditures. Proposed § 301.6227–1 also reserves this same paragraph and does not contain rules to coordinate sections 6227 and 905(c). The Treasury Department and the IRS seek comments regarding the coordination of sections 6227 and 905(c) for consideration in future guidance.

Lastly, the reference to “items of income, gain, loss, deduction, or credit of the partnership” in former proposed § 301.6227–1(a) has been replaced with

a reference to “partnership-related items.”

#### B. Revisions to the Regulations Under Section 6227 Unrelated to the TTCA Amendments

Proposed § 301.6227–1(a) now coordinates the rules regarding the filing of an AAR and the revocation of a designation of the partnership representative under § 301.6223–1. Former proposed § 301.6227–1(a) provided that the partnership may not file an AAR solely for the purpose of allowing the partnership to change the designation of a partnership representative. Proposed § 301.6227–1(a) now adds that when the partnership changes the designation of the partnership representative or the appointment of a designated individual in conjunction with the filing of an AAR, the change in designation or appointment is treated as occurring prior to the filing of the AAR.

Former proposed § 301.6227–1(b) provided that an AAR may not be filed after a notice of administrative proceeding (NAP) has been mailed. To account for situations in which the IRS mails a NAP, but then withdraws it, proposed § 301.6227–1(b) now provides that an AAR may not be filed after a NAP has been mailed, except when the NAP has been withdrawn under proposed § 301.6231–1(f).

Additions were also made in proposed § 301.6227–3(c) to clarify the rules for pass-through partners, unrelated to the changes made by the TTCA. First, proposed § 301.6227–3(c)(1) provides that when a pass-through partner takes into account adjustments requested in an AAR in accordance with proposed § 301.6226–3(e), the pass-through partner must provide the information described in proposed § 301.6227–3(c)(3) as opposed to the information in described in proposed § 301.6226–3(e)(3)(iii) when furnishing statements to its partners. Second, under proposed § 301.6227–3(c)(1), a pass-through partner that computes and pays an imputed underpayment in accordance with proposed § 301.6226–3(e)(4) may not take into account any modifications. Third, proposed § 301.6227–3(c)(4) provides that when a pass-through partner furnishes a statement to an affected partner under proposed § 301.6227–3(c), the affected partner must treat that statement as if it were a statement described in proposed § 301.6227–3(a) that was furnished to such affected partner.

#### 6. Notices of Proceedings and Adjustments

Section 6231(a) provides that the Secretary shall mail to the partnership and to the partnership representative a notice of any administrative proceeding initiated at the partnership level, notice of any proposed partnership adjustment resulting from that proceeding (NOPPA), and notice of any final partnership adjustment (FPA). Prior to amendment by the TTCA, section 6231(a) also provided that any FPA shall be mailed no earlier than 270 days after the date on which the NOPPA is mailed. Such notices shall be sufficient if mailed to the last known address of the partnership and the partnership representative, even if the partnership has terminated its existence. See section 6231(a) flush language (prior to amendment by the TTCA).

Prior to amendment by the TTCA, the statute did not limit the period for the IRS to propose adjustments under the centralized partnership audit regime. Section 206(h) of the TTCA amended section 6231 to address this issue. As amended, section 6231(b)(1) provides that any NOPPA shall not be mailed later than the date determined under section 6235(a)(1), which is generally the date that is 3 years after the later of: (1) The date on which the partnership return for the taxable year was filed, (2) the return due date for the taxable year, or (3) the date on which the partnership filed an AAR with respect to the taxable year.

Section 206(h) of the TTCA makes a conforming amendment to section 6231(a) to reflect the addition of the period of limitations to made partnership adjustments. Prior to amendment, section 6231(a) provided that “Such notices shall be sufficient if mailed to the last known address of the partnership representative or the partnership (even if the partnership has terminated its existence).” The amendment replaced the words “Such notices” with “Any notice of final partnership adjustment.”

Section 201(c) of the TTCA also makes a conforming amendment to section 6231(a) by striking the phrase “all items of income, gain, loss, deduction, or credit of the partnership” and inserting “all partnership-related items.”

##### A. Proposed § 301.6231–1

Proposed rules under § 301.6231–1 were previously published in the **Federal Register** (82 FR 60161–62) in the December 2017 NPRM (former proposed § 301.6231–1). For an explanation of the rules under former

proposed § 301.6231–1, see 82 FR 60151–52.

Although not required by statute, former proposed § 301.6231–1(b)(1) provided a period of limitations for making partnership adjustment. That section provided that a NOPPA may not be mailed after the expiration of the period described in section 6235(a)(1), including any extensions of that period and after applying any of the special rules in section 6235(c) (providing additional time for situations where no return is filed, fraud, and other specified reasons).

Former proposed § 301.6231–1(c) provided that NAPs, NOPPAs, and FPAs are sufficient if mailed to the last known address of the partnership and the partnership representative. As discussed above in this section of the preamble, section 6231(a) now provides that any FPA is sufficient if mailed to the last known address of the partnership and the partnership representative. The Treasury Department and the IRS have determined that while the last known address requirement under section 6231(a) only applies to a notice of final partnership adjustment, the IRS will also mail the NAP and the NOPPA to the last known address of the partnership and the partnership representative.

Accordingly, because the rules under former proposed § 301.6231–1(b)(1) and (c) are consistent with the statutory changes to section 6231(a), those rules are unchanged. The only change to former proposed § 301.6231–1 was to replace references to “item of income, gain, loss, deduction, or credit” and to a “partner’s distributive share” in former proposed § 301.6231–1(a)(1) with a reference to “partnership-related item”.

#### 7. Assessment, Collection, and Payment of Imputed Underpayments

Section 6232(a) provides rules for the assessment, collection, and payment of imputed underpayments. Section 206(g) of the TTCA amended section 6232(a) to clarify that the assessment of any imputed underpayment is not subject to the deficiency procedures under subchapter B of chapter 63 of the Code and to clarify that in the case of an AAR, the underpayment may be assessed when the AAR is filed. See JCX–6–18, at 48.

Section 6232(b) provides limitations on the assessment of an imputed underpayment. Section 206(g) of the TTCA amended section 6232(b) to correct a reference to “assessment of a deficiency” to now refer to “assessment of an imputed underpayment.” Section 206(p) of the TTCA also amends section

6232(b) to strike the reference to “this chapter” and replace it with “this subtitle (other than subchapter B of this chapter).”

Section 205 of the TTCA added a new subsection (f) to section 6232 to provide a mechanism for collection of tax due in the case of a failure of a partnership or S corporation to pay an imputed underpayment or specified similar amount. Under section 6232(f)(1), if any amount of any imputed underpayment to which section 6225 applies or any specified similar amount as defined in section 6232(f)(2) has not been paid by the date which is 10 days after the date on which the Secretary provides notice and demand for such payment, the Secretary may assess upon each partner of the partnership a tax equal to such partner’s proportionate share of such amount.

Under section 6232(f)(2), the term “specified similar amount” means the amount determined under section 6226(b)(4)(ii)(II) and any amount assessed upon a partner under section 6232(f)(1)(B) that is a partnership or an S corporation. Section 206(g)(2)(B) of the TTCA amended section 6232(b) to provide that the limitations on assessment with respect to an imputed underpayment do not apply in the case of a specified similar amount defined in section 6232(f)(2).

The Treasury Department and the IRS are not proposing rules under section 6232(f) at this time. The Treasury Department and the IRS request comments with respect to section 6232(f), including the determination of a partner’s proportionate share of the unpaid amount, for consideration with respect to future guidance.

#### A. Proposed § 301.6232–1

Proposed rules under § 301.6232–1 were previously published in the **Federal Register** (82 FR 60162–63) in the December 2017 NPRM (former proposed § 301.6232–1). For an explanation of the rules under former proposed §§ 301.6232–1, see 82 FR 60152.

Former proposed § 301.6232–1(a) provided that because the centralized partnership audit regime under subchapter C of chapter 63 applies to an assessment of an imputed underpayment, the deficiency procedures under subchapter B of chapter 63 do not apply. Former proposed § 301.6232–1(b) provided that the IRS may assess an underpayment reflected on an AAR on the date the AAR is filed. Former proposed § 301.6232–1(c) provided limitations on assessment of the imputed underpayment, except as otherwise

provided in § 301.6232–1. Because the rules under former proposed § 301.6232–1(a) and (b) are consistent with the statutory changes to section 6232(a), those rules are unchanged.

Proposed § 301.6232–1(c) is generally the same as former proposed § 301.6232–1(c). However, changes were made to take into account section 206(g)(2)(B) of TTCA, providing that the limitations on assessment do not apply to specified similar amounts, and section 206(p) of TTCA, providing that the limitations on assessments under proposed § 301.6232–1(c) apply except as otherwise provided in subtitle F of the Code (other than deficiency procedures under subchapter B of chapter 63).

With respect to former proposed § 301.6232–1(d), the reference to “items of income, gain, loss, deduction, or credit” in former proposed § 301.6232–1(d)(1)(i) was replaced with a reference to “partnership-related items.”

#### 8. Interest and Penalties Related to Imputed Underpayments

Section 6233 provides rules related to interest and penalties with respect to imputed underpayments. Section 206(i) of the TTCA amended section 6233 by adding a new subsection (c), which provides a cross-reference to section 6603 for rules allowing deposits to suspend the running of interest on potential underpayments.

#### A. Proposed §§ 301.6233(a)–1 and 301.6233(b)–1

Proposed rules under §§ 301.6233(a)–1 and 301.6233(b)–1 were previously published in the **Federal Register** (82 FR 60163–65) in the December 2017 NPRM (former proposed §§ 301.6233(a)–1 and 301.6233(b)–1). For an explanation of the rules under former proposed §§ 301.6233(a)–1 and 301.6233(b)–1, see 82 FR 60152–53.

Proposed § 301.6233(a)–1 provides rules for determining interest and penalties from the reviewed year, and proposed § 301.6233(b)–1 provides rules for determining interest and penalties from the adjustment year. Neither former proposed § 301.6233(a)–1 nor former proposed § 301.6233(b)–1 provided rules regarding deposits to suspend the running of interest on underpayments. The Treasury Department and the IRS are not proposing rules regarding the interaction of the deposit rules under section 6603 and the interest rules under section 6233. However, the Treasury Department and the IRS request comments for consideration in future guidance regarding the

interaction between section 6603 and the interest rules under section 6233.

Former proposed § 301.6233(a)–1(c)(2)(ii)(C) provided a definition of “negative adjustment” and defined that term through reference to “items of income, gain, loss, deduction, or credit.” Proposed § 301.6225–1 now uses the term “negative adjustment” and the phrase “items of income, gain, loss, deduction, or credit” has been removed from subchapter C of chapter 63. To reflect these changes, proposed § 301.6233(a)–1(c)(2)(ii)(C) now provides that a “decreasing adjustment” is “an adjustment to a partnership-related item that resulted in a decrease to the imputed underpayment.” Example 3 under proposed § 301.6233(a)–1(c)(3) also reflects changes to former proposed §§ 301.6225–1 and 301.6225–2.

Former proposed § 301.6233(a)–1(c)(2)(ii), regarding how to calculate the portion of the imputed underpayment to which a penalty applies, referred to “non-credit partnership adjustments” and “credit adjustments.” Under proposed § 301.6225–1(e)(3)(iii) certain adjustments to creditable expenditures are treated as an adjustment to a credit and may impact the calculation of the imputed underpayment. To properly account for such adjustments when determining the portion of an imputed underpayment subject to a penalty, the term “non-credit partnership adjustment” was changed to “a partnership adjustment that is not an adjustment to a credit or treated as an adjustment to a credit,” and the term “credit adjustment” changed to “an adjustment to a credit or treated as an adjustment to a credit.”

Former proposed § 301.6233(a)–1(c)(2)(iii)(B), regarding the application of the substantial understatement penalty under section 6662(d)(1)(A)(i) to imputed underpayments, provided that taxable income meant the net ordinary business income or loss of the partnership. The reference to “ordinary business” failed to account for other sources of income of the partnership that are appropriate to consider for purposes of the substantial understatement penalty. Therefore, proposed § 301.6233(a)–1(c)(2)(iii)(B) now provides that for purposes of determining the amount of tax required to be shown on the return it is the net income or loss of the partnership that is treated as taxable income. See Page 5 of Form 1065, Return of Partnership Income.

Former proposed § 301.6233(a)–1(c)(2)(v), pertaining to reasonable cause and good faith defenses, provided that

partner-level defenses may not be raised in a proceeding of the partnership except as provided under the modification procedures pertaining to amended returns and partner closing agreements. For clarity, this provision has been moved to proposed § 301.6233(a)–1(c)(1). Furthermore, the provision allowing partner-level defenses to penalties to be raised under the modification procedures has been removed. A partner may raise a partner-level defense by filing a claim for refund under procedures existing outside of the centralized partnership audit regime or through an agreement with the IRS regarding an adjustment to a partnership-related item.

#### 9. *Judicial Review of Partnership Adjustments*

Section 6234(a) provides that within 90 days after the date on which an FPA is mailed under section 6231 with respect to any partnership taxable year, the partnership may file a petition for readjustment for such taxable year with the Tax Court, the district court in which the partnership's principal place of business is located, or the Court of Federal Claims. Prior to amendment by the TTCA, section 6234(b)(1) provided that a petition for readjustment under section 6234 may be filed in a district court of the United States or the Court of Federal Claims only if the partnership filing the petition deposits with the Secretary, on or before the date the petition is filed, the amount of the imputed underpayment. Section 206(j) of the TTCA amended section 6234(b)(1) to clarify that the amount of the jurisdictional deposit that the partnership must make in order to file a readjustment petition in a district court or the Court of Federal Claims is the amount of (as of the date of the filing of the petition) the imputed underpayment, penalties, additions to tax, and additional amounts with respect to the imputed underpayment. See JCX–6–18, at 49.

##### A. Proposed § 301.6234–1

Proposed rules under § 301.6234–1 were previously published in the **Federal Register** (82 FR 60165–66) in the December 2017 NPRM (former proposed § 301.6234–1). For a further explanation of the rules under former proposed § 301.6234–1, see 82 FR 60153.

Former proposed § 301.6234–1(b) provided that a partnership may file a petition for a readjustment of any partnership adjustment in a district court or the Court of Federal Claims “only if the partnership filing the petition deposits with the [IRS], on or

before the date the petition is filed, the amount of any imputed underpayment resulting from the partnership adjustment.”

To reflect the amendment to section 6234(b)(1) made by section 206(j) of the TTCA regarding the amount of the deposit, proposed § 301.6234–1(b) now provides that amount required to be deposited is the amount (as of the date of the filing of the petition) of any imputed underpayment and any penalties, additions to tax, and additional amounts with respect to such imputed underpayment.

To account for the possibility that multiple imputed underpayments may be reflected in an FPA, proposed § 301.6234–1(b) also now provides that the partnership must only deposit the amount of any imputed underpayment to which the petition for readjustment relates and the amount of any penalties, additions to tax, and additional amounts with respect to such imputed underpayment.

#### 10. *Period of Limitations on Making Adjustments*

Section 6235 provides the period of limitations on making adjustments under the centralized partnership audit regime. Under section 6235(a), the general rule is that no adjustment for any partnership taxable year may be made after the later of three specified dates. Section 206(k) of the TTCA amended section 6235(a) by inserting “or section 905(c)” after “Except as otherwise provided in this section.” The amendment makes clear that the period of limitations on making adjustments under the centralized partnership audit regime does not limit the period for notification of the Secretary and redetermination of tax under section 905(c) with respect to foreign tax redeterminations.

In addition, section 206(k) of the TTCA amended section 6235 by striking paragraph (d), which provided for a suspension of the period on making adjustments when the Secretary mails an FPA. That provision was similar to a provision that existed under TEFRA, but the provision has no effect on making adjustments under the centralized partnership audit regime. See JCX–6–18, at 49–50.

##### A. Proposed § 301.6235–1

Proposed rules under § 301.6235–1 were previously published in the **Federal Register** (82 FR 60166–67) in the December 2017 NPRM (former proposed § 301.6235–1). For an explanation of the rules under former proposed § 301.6235–1, see 82 FR 60153–54.

Proposed § 301.6235–1(a) now reflects the amendments to section 6235 to provide an exception for section 905(c) and to remove the reference to section 6235(d).

#### 11. *Definitions and Special Rules*

##### A. Proposed § 301.6241–1

Proposed rules under § 301.6241–1 were previously published in the **Federal Register** (82 FR 27399–400) in the June 2017 NPRM (former proposed § 301.6241–1). For an explanation of the rules under former proposed § 301.6241–1, see 82 FR 27369.

Former proposed § 301.6241–1(a)(1) defined the term “adjustment year” to mean the partnership taxable year in which a decision of a court becomes final (if a petition is filed under section 6234), an AAR is made, or, in any other case, when an FPA is mailed (or if the partnership waives its right to an FPA, the year the waiver is executed by the IRS). Section 206(p) of the TTCA amended section 6227 to provide that an AAR is “filed,” as opposed to “made.” To reflect this amendment, proposed § 301.6241–1(a)(1) now provides that an AAR is “filed” and not “made.”

Former proposed § 301.6241–1(a)(3) defined the term “imputed underpayment” as the amount determined under § 301.6225–1. Because an imputed underpayment may also be computed and paid pursuant to proposed § 301.6226–3(e)(4) (relating to pass-through partners) as well as under proposed § 301.6227–2 and § 301.6227–3(c) (relating to AARs), proposed § 301.6241–1(a)(3) now refers to imputed underpayments determined under those provisions. Proposed § 301.6241–1(a)(3) was also clarified to provide that an imputed underpayment calculated under section 6225 is calculated under section 6225 and the regulations thereunder.

Proposed § 301.6241–1(a)(4) now provides that the term “indirect partner” includes a person that holds an interest in the partnership through a wholly owned entity that is disregarded as separate from its owner for Federal income tax purposes, such as a disregarded entity or grantor trust. This change from the language in the former proposed regulations clarifies that a partnership may seek modification under proposed § 301.6225–2 based on indirect partners holding an interest through a disregarded entity or grantor trust.

Proposed § 301.6241–1(a)(6) now provides that the term “partnership adjustment” means any adjustment to a partnership-related item (as defined in

proposed § 301.6241–6), and such term includes a portion of a partnership adjustment.

Former proposed § 301.6241–1(a)(10) defined a tax attribute as anything that can affect, with respect to a partnership or partner, the amount or timing of an item of income, gain, loss, deduction, or credit or that can affect the amount of tax due in any taxable year. As discussed in section 4.A. of this preamble, section 203(a) of the TTCA amended section 6225 to provide an alternative procedure to filing amended returns during modification under which a partner agrees to take into account adjustments to the tax attributes “of such partner”. Section 6225(c)(2)(B)(ii). To reflect the amendment to section 6225(c)(2)(B) regarding tax attributes of a partner, the phrase “with respect to a partnership or a partner” was removed from the definition of tax attribute under former proposed § 301.6241–1(a)(10). The reference to “items of income, gain, loss, deduction, or credit” in former proposed § 301.6241–1(a)(10) was also replaced with a reference to “partnership-related item.”

#### B. Proposed § 301.6241–2

Proposed rules under § 301.6241–2 were previously published in the **Federal Register** (82 FR 27400) in the June 2017 NPRM (former proposed § 301.6241–2). Former proposed § 301.6241–2 provided for coordination between Title 11 of the United States Code, which deals with bankruptcy, and the centralized partnership audit regime. Because the amendments by the TTCA did not affect section 6241(6), the rules under former proposed § 301.6241–2 are unchanged. For an explanation of the rules under former proposed § 301.6241–2, see 82 FR 27369–70.

#### C. Proposed § 301.6241–3

Proposed rules under § 301.6241–3 were previously published in the **Federal Register** (82 FR 27400–02) in the June 2017 NPRM (former proposed § 301.6241–3). For an explanation of the rules under former proposed § 301.6241–3, see 82 FR 27370–71.

Former proposed § 301.6241–3(a)(3) provided that the rules requiring former partners to take into account adjustments of a partnership which the IRS determined had ceased to exist did not apply to the former partners of a partnership that had elected out of the centralized partnership audit regime under section 6221(b). Because under section 6226(b)(4) a partnership-partner that has elected out of the centralized partnership audit regime may be liable

for an imputed underpayment in the case of a push out election, proposed § 301.6241–3(a)(3) now provides that the rules under proposed § 301.6241–3 apply to a partnership-partner and its former partners, regardless of whether the partnership-partner has elected out of the centralized partnership audit regime. Accordingly, under proposed § 301.6241–3(a)(3), the former partners of any partnership that may be liable for an imputed underpayment, including a partnership-partner that has elected out of the centralized partnership audit regime, will be required to take into account a partnership adjustment if the IRS determines that such partnership ceased to exist before the partnership adjustment had taken effect. Example 2 under proposed § 301.6241–3(f) illustrates this rule.

Former proposed § 301.6241–3(b)(2)(i) provided that the IRS will not determine that a partnership has ceased to exist solely because: (i) A partnership has technically terminated under section 708(b)(1)(B); (ii) the partnership has made a valid election under section 6226 and the regulations thereunder with respect to any imputed underpayment; or (iii) the partnership has not paid any amount the partnership is liable for under subchapter C of chapter 63. To reflect the amendment to section 708 by the Act to eliminate technical terminations, the reference to section 708(b)(1)(B) was removed from former proposed § 301.6241–3(b)(2)(i). In addition, a rule was added to former proposed § 301.6241–3(b)(2)(i) to provide that a partnership also does not cease to exist solely because it furnished statements in accordance with proposed § 301.6226–3(e)(3). This change clarifies that partnership-partners that properly furnish statements in accordance with proposed § 301.6226–3(e)(3) (and therefore are not liable for an imputed underpayment) are treated the same as an audited partnership who made a valid election under section 6226.

Additional clarifications were made to proposed § 301.6241–3. First, the phrase “any amounts” in former proposed § 301.6241–3(a)(2) was replaced with the phrase “any unpaid amounts.” This clarification was made to eliminate the implication that the partnership was not liable for the original amount due and to clarify that if the IRS determines that a partnership has ceased to exist, the partnership is no longer liable for any remaining unpaid amounts due under subchapter C of chapter 63, meaning that if the partnership had made a prior payment, the IRS can retain that payment. Second, former proposed § 301.6241–

3(b)(2)(iii) provided that the IRS may not determine that a partnership has ceased to exist after the expiration of the period of limitations on collection. Proposed § 301.6241–3(b)(2)(iii) now provides that the period relevant to this determination is the period of limitations on collection with respect to the imputed underpayment that was assessed against the partnership that ceased to exist. Finally, prior references to section 708(b)(1)(A) in former proposed § 301.6241–3(b)(2), (d)(2), and (f) were changed to refer to section 708(b)(1) to reflect the amendment to section 708 made by the Act.

#### D. Proposed § 301.6241–4

Proposed rules under § 301.6241–4 were previously published in the **Federal Register** (82 FR 27402) in the June 2017 NPRM (former proposed § 301.6241–4). For an explanation of the rules under former proposed § 301.6241–4, see 82 FR 27371.

Former proposed § 301.6241–4 provided that payments made by a partnership under the centralized partnership audit regime, including payment of any imputed underpayment and any amount under proposed § 301.6226–3, were not deductible to the partnership. Because the payment amount for a partnership-partner in the case of a push out election is referred to as an imputed underpayment, reference to any amount under § 301.6226–3 in former proposed § 301.6241–4 became superfluous and thus was removed.

#### E. Proposed § 301.6241–5

Proposed rules under § 301.6241–5 were previously published in the **Federal Register** (82 FR 27402) in the June 2017 NPRM (former proposed § 301.6241–5). For an explanation of the rules under former proposed § 301.6241–5, see 82 FR 27371.

Former proposed § 301.6241–5 provided rules for extending the centralized partnership audit regime to entities filing partnership returns. References in former proposed § 301.6241–5(a) to “items of income, gain, loss, deduction, or credit” and “partner’s distributive share” were replaced with a reference to “partnership-related item.” Proposed § 301.6241–5(c) now also reflects the fact that certain business arrangements, which may not be classified as entities, can file partnership returns to make an election under section 761(a). Under proposed § 301.6241–5(c), the centralized partnership audit regime does not apply in that case notwithstanding the filing of a partnership return.

## 12. Coordination With Other Chapters of the Code

Section 201(b) of the TTCA added section 6241(9) to the Code regarding the coordination of the centralized partnership audit regime with chapters of the Code other than chapter 1. Section 6241(9)(A) provides that the centralized partnership audit regime shall not apply with respect to any tax imposed (including any amount required to be deducted or withheld) under chapter 2, 2A, 3, or 4 of subtitle A of the Code, except that any partnership adjustment determined under the centralized partnership audit regime for purposes of chapter 1 shall be taken into account for purposes of determining any such tax to the extent that such adjustment is relevant to such determination. Section 6241(9)(B) provides that in the case of any tax imposed (including any amount required to be deducted or withheld) under chapters 3 and 4 of the Code, which is determined with respect to a partnership adjustment, such tax shall be so determined with respect to the reviewed year and shall be so imposed (or so required to be deducted or withheld) with respect to the adjustment year.

Section 201(b) also added section 6501(c)(12) to the Code regarding the statute of limitation on assessment of taxes under chapter 2 or 2A which are attributable to any partnership adjustment. Section 6501(c)(12) provides in the case of any partnership adjustment determined under the centralized partnership audit regime, the period for assessment of any tax imposed under chapter 2 or 2A of the Code which is attributable to such adjustment shall not expire before the date that is one year after one of two events. In the case of an adjustment pursuant to the decision of a court in a proceeding brought under section 6234, the period for assessment shall not expire before the date that is one year after the decision becomes final. In any other case, the period for assessment shall not expire before the date that is one year after 90 days after the date on which the FPA is mailed under section 6231.

### A. Proposed § 301.6241-7

Former proposed § 301.6221(a)-1(d) provided that nothing in subchapter C of chapter 63 precluded the IRS from making any adjustment to an item of a partnership (as described in the prior version of § 301.6221(a)-1(b)) outside of the centralized partnership audit regime for purposes of determining tax imposed by provisions of the Code other than

chapter 1. Accordingly, under former proposed § 301.6221(a)-1(d), the IRS was not precluded from examining a partnership's compliance with its obligations under chapters 3 and 4 (or any other chapter of the Code other than chapter 1) in a proceeding outside of the centralized partnership audit regime. Former proposed § 301.6221(a)-1(f) provided examples to illustrate this concept.

The rules contained in former proposed § 301.6221(a)-1(d), and the examples in former proposed § 301.6221(a)-1(f), are consistent with section 6241(9)(A). However, given that these concepts are now codified in section 6241, the rules and examples under former proposed § 301.6221(a)-1(d) and (f) are now under proposed § 301.6241-7(a)(1) and (2). References to "items of income, gain, loss, deduction, or credit" were replaced with references to "partnership-related item" as defined under proposed § 301.6241-6. Other editorial changes were made to reflect revisions to former proposed § 301.6221(a)-1.

Proposed § 301.6241-7(a)(1) provides that the centralized partnership audit regime does not apply with respect to any tax imposed (including any amount required to be deducted or withheld) under any chapter of the Code other than chapter 1, including chapter 2, 2A, 3, or 4 of the Code. Accordingly, for purposes of determining taxes under chapters of the Code other than chapter 1, the IRS may make adjustments to partnership-related items in proceedings not subject to the centralized partnership audit regime. However, to the extent an adjustment to a partnership-related item or a determination made under the centralized partnership audit regime is relevant in determining tax outside of chapter 1, such adjustment or determination must be taken into account in determining that non-chapter 1 tax. Proposed § 301.6241-7(a)(2) provides examples to illustrate these concepts.

Proposed § 301.6241-7(b) provides rules for coordinating the centralized partnership audit regime with chapters 3 and 4 of the Code. Proposed § 301.6241-7(b)(1) restates the rule in section 6241(9)(B) regarding the timing of withholding for tax imposed under chapters 3 and 4 that is determined with respect to a partnership adjustment. Proposed § 301.6241-7(b)(2) defines the terms chapter 3, chapter 4, and amount subject to withholding.

Former proposed §§ 301.6225-1(a)(4) and 301.6226-2(h) provided rules to coordinate the collection of tax in the case of partnership adjustments to

amounts subject to withholding under chapters 3 and 4, including rules for when the partnership pays an imputed underpayment resulting from such an adjustment and rules for when the partnership makes the election under section 6226 with respect to such an imputed underpayment. These rules now fall within proposed § 301.6241-7(b)(3) and (b)(4). Proposed § 301.6241-7(b)(4) now provides that a partnership required to pay tax under chapter 3 or chapter 4 when it makes an election under section 6226 is required to pay the tax before the due date of the partnership return for the adjustment year (without regard to extension).

## 13. Other Amendments by the TTCA to the Centralized Partnership Audit Regime

Section 206(l) of the TTCA amended section 6241 by adding a new provision, section 6241(11), providing for the treatment of special enforcement matters. Under section 6241(11), in the case of partnership-related items which involve special enforcement matters, the Secretary may prescribe regulations pursuant to which the centralized partnership audit regime (or any portion thereof) does not apply to such items, and that such items are subject to special rules (including rules related to assessment and collection) as the Secretary determines to be necessary for the effective and efficient enforcement of the Code. For purposes of section 6241(11), the term "special enforcement matters" means: (1) Failure to comply with the requirements of section 6226(b)(4)(A)(ii) (regarding the requirement for a pass-through partner to furnish statements or compute and pay an imputed underpayment); (2) assessments under section 6851 (relating to termination assessments of income tax) or section 6861 (relating to jeopardy assessments of income, estate, gift, and certain excise taxes); (3) criminal investigations; (4) indirect methods of proof of income; (5) foreign partners or partnerships; and (6) other matters that the Secretary determines by regulation present special enforcement considerations. Rules under this provision may be provided in future guidance. The Treasury Department and the IRS are considering proposing rules under section 6241(11)(B)(vi) (dealing with other matters that present special enforcement considerations) which allow certain partnership-related items reported solely by persons other than the partnership to be adjusted outside the centralized partnership audit regime. The Treasury Department and the IRS request comments on this provision, including whether there are



any additional special enforcement considerations that should be addressed through regulations.

Section 206(m) of the TTCA amended section 6241 by adding a new provision, section 6241(12), to clarify that a U.S. shareholder of a controlled foreign corporation (CFC) which is a partner of a partnership shall be treated as a partner of such partnership for purposes of the centralized partnership audit regime. The U.S. shareholder's distributive share of the partnership is the U.S. shareholder's pro rata share of the CFC's Subpart F income determined under rules similar to section 951(a)(2). Similarly, a taxpayer that makes a Qualified Electing Fund (QEF) election with respect to a passive foreign investment company (PFIC) that is a partner in a partnership shall be treated as a partner of such partnership. In this case, a taxpayer's distributive share of the partnership is the taxpayer's pro rata share of the PFIC's ordinary earnings and net capital gain determined under rules similar to section 1293(b). Consequently, in both circumstances, the U.S. shareholder of a CFC and the taxpayer of a PFIC will be treated as the adjustment year partner or reviewed year partner under the centralized partnership audit regime, where applicable. Regulatory authority was also given to issue regulations or other guidance as necessary or appropriate to carry out the purpose of the provision, including regulations which apply the rule in similar circumstances or with respect to similarly situated persons. Consequently, in both circumstances, the U.S. shareholder of a CFC and the taxpayer of a PFIC will be treated as the adjustment year partner or reviewed year partner under proposed §§ 301.6241-1(a)(2) and 301.6241-1(a)(9) where applicable.

### Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

Because the proposed regulations would not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at [www.irs.gov](http://www.irs.gov).

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing has been scheduled for October 9, 2018, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by October 1, 2018. Submit a signed paper or electronic copy of the outline as prescribed in this preamble under the **ADDRESSES** heading. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal authors of these proposed regulations are Jennifer M. Black, Joy E. Gerdy-Zogby, Steven L. Karon, and Brittany Harrison of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

### List of Subjects

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Withdrawal of Notices of Proposed Rulemaking and Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notices of proposed rulemaking (REG-119337-17, REG-120232-17, REG-120233-17, and REG-118067-17) that were published in the **Federal Register** on November 30, 2017 (82 FR 56765), December 19, 2017 (82 FR 27071), and February 2, 2018 (83 FR 4868) are withdrawn. Also under the authority of 26 U.S.C. 7805, 301.6221(a)-1, 301.6222-1, 301.6225-1, 301.6225-2, 301.6225-3, 301.6225-4, 301.6226-1, 301.6226-2, 301.6226-3, 301.6226-4, 301.6227-1, 301.6227-2, 301.6227-3 of the notice of proposed rulemaking (REG-136118-15) published in the **Federal Register** on June 14, 2017 (82 FR 27334) is withdrawn.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

#### PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.704-1 is amended by:

- 1. Adding paragraph (b)(1)(viii).
- 2. Adding a sentence to the end of paragraph (b)(2)(iii)(a).
- 3. Adding paragraphs (b)(2)(iii)(f), (b)(2)(iv)(i)(4), and (b)(4)(xi) through (xv).

The additions read as follows:

#### § 1.704-1 Partner's distributive share.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(viii) *Items relating to a final determination under the centralized partnership audit regime—(a) In general.* Certain items of income, gain, loss, deduction or credit may result from a final determination under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) (relating to the centralized partnership audit regime). Special rules

under section 704(b) and § 1.704-1(b) apply to these items that take into account that the item relates to the reviewed year (as defined in § 301.6241-1(a)(8) of this chapter) but occurs in the adjustment year (as defined in § 301.6241-1(a)(1) of this chapter). See paragraphs (b)(2)(iii)(a) and (f), (b)(2)(iv)(i)(4), and (b)(4)(xi) through (xv) of this section.

(b) *Successors*—(1) *In general.* In the case of a transfer or liquidation of a partnership interest subsequent to a reviewed year, a successor has the meaning provided in paragraph (b)(1)(viii)(b) of this section. In the case of a subsequent transfer by a successor of a partnership interest, the principles of paragraph (b)(1)(viii)(b) of this section will also apply to the new successor.

(2) *Identifiable transferee partner.* Except as otherwise provided in paragraph (b)(1)(viii)(b)(3) of this section, in the case of a transfer of all or part of a partnership interest during or subsequent to the reviewed year, a successor is the partner to which the reviewed year transferor partner's capital account carried over (or would carry over if the partnership maintained capital accounts) under paragraph (b)(2)(iv)(l) of this section (an identifiable transferee partner).

(3) *Unidentifiable transferee partner.* If, after exercising reasonable diligence, the partnership cannot determine an identifiable transferee partner under paragraph (b)(1)(viii)(b)(2) of this section, each partner in the adjustment year that is not an identifiable transferee partner and was not a partner in the reviewed year, (an unidentifiable transferee partner) is a successor to the extent of the proportion of its interest in the partnership to the total interests of unidentifiable transferee partners in the partnership (considering all facts and circumstances).

(4) *Liquidation of partnership interest.* In the case of a liquidation of a partner's entire interest in the partnership during or subsequent to the reviewed year, the successors to the liquidated partner are certain adjustment year partners (as defined in § 301.6241-1(a)(2) of this chapter) as provided in this paragraph (b)(1)(viii)(b)(4). The determination of the extent to which the adjustment year partners are treated as successors under this section must be made in a manner that reflects the extent to which the adjustment year partners' interests in the partnership increased as a result of the liquidating distribution (considering all facts and circumstances).

(2) \* \* \*  
(iii) \* \* \*

(a) \* \* \* Notwithstanding any other sentence of this paragraph (b)(2)(iii)(a),

an allocation of any of the following will be substantial only if the allocation is described in paragraph (b)(2)(iii)(f) of this section: an expenditure for any payment required to be made by a partnership under subchapter C of chapter 63 (relating to the centralized partnership audit regime), adjustments reflected on a statement furnished to a pass-through partner (as defined in § 301.6241-1(a)(5) of this chapter) under § 301.6226-3(e)(4) of this chapter, or interest, penalties, additions to tax, or additional amounts described in section 6233.

\* \* \* \* \*

(f) *Certain expenditures under the centralized partnership audit regime*—(1) *In general.* The economic effect of an allocation of an expenditure for any payment required to be made by a partnership under subchapter C of chapter 63 (as described in § 301.6241-4(a) of this chapter) is substantial only if the expenditure is allocated in the manner described in this paragraph (b)(2)(iii)(f). For partnerships with allocations that do not satisfy paragraph (b)(2)(ii) of this section, see paragraph (b)(4)(xi) of this section.

(2) *Expenditures for imputed underpayments or similar amounts.* Except as otherwise provided, an expenditure for an imputed underpayment, as defined in § 301.6241-1(a)(3) of this chapter, is allocated to the reviewed year partner (or its successor, as defined in paragraph (b)(1)(viii)(b) of this section) in proportion to the allocation of the notional item (as described in § 301.6225-4(b) of this chapter) to which the expenditure relates, taking into account modifications under § 301.6225-2 of this chapter attributable to that partner.

(3) *Interest, penalties, additions to tax, or additional amounts described in section 6233.* An expenditure for interest, penalties, additions to tax, or additional amounts as determined under section 6233 (or penalties and interest described in § 301.6226-3(e)(4)(iv) of this chapter) is allocated to the reviewed year partner (or its successor, as defined in paragraph (b)(1)(viii)(b) of this section) in proportion to the allocation of the portion of the imputed underpayment with respect to which the penalty applies or related notional item to which it relates (whichever is appropriate), taking into account modifications under § 301.6225-2 of this chapter attributable to that partner.

(4) *Imputed underpayments unrelated to notional items.* In the case of an imputed underpayment that results

from a partnership adjustment for which no notional items are created under § 301.6225-4(b)(2) of this chapter, the expenditure must be allocated to the reviewed year partner (or its successor, as defined in paragraph (b)(1)(viii)(b) of this section) that would have borne the economic benefit or burden of the partnership adjustment if the partnership and its partners had originally reported in a manner consistent with the partnership adjustment that resulted in the imputed underpayment with respect to the reviewed year.

(iv) \* \* \*  
(i) \* \* \*

(4) *Certain expenditures under the centralized partnership audit regime.* Notwithstanding paragraph (b)(2)(iv)(i)(1) of this section, the economic effect of an allocation of an expenditure for any payment required to be made by a partnership under subchapter C of chapter 63 (as described in § 301.6241-4(a) of this chapter) is substantial only if the expenditure is allocated in the manner described in paragraph (b)(2)(iii)(f) of this section. For partnerships with allocations that do not satisfy paragraph (b)(2)(ii) of this section, see paragraph (b)(4)(xii) of this section.

\* \* \* \* \*

(4) \* \* \*

(xi) *Notional items under the centralized partnership audit regime.* An allocation of a notional item (as described in § 301.6225-4(b)(3) of this chapter) does not have substantial economic effect within the meaning of paragraph (b)(2) of this section. However, the allocation of a notional item of income or gain described in § 301.6225-4(b)(3)(ii) and (iv) of this chapter, or expense or loss described in § 301.6225-4(b)(3)(iii) and (v) of this chapter, will be deemed to be in accordance with the partners' interests in the partnership if the notional item is allocated in the manner in which the corresponding actual item would have been allocated in the reviewed year under the rules of this section, treating successors (as defined in paragraph (b)(1)(viii)(b) of this section) as reviewed year partners. Additionally, the allocation of a notional item of expense or loss described in § 301.6225-4(b)(3)(iv) of this chapter, or a notional item of income or gain described in § 301.6225-4(b)(3)(v) of this chapter, will be deemed to be in accordance with the partners' interests in the partnership if the notional item is allocated to the reviewed year partners (or their successors as defined in paragraph (b)(1)(viii)(b) of this section) in the

manner in which the excess item was allocated in the reviewed year.

(xii) *Certain section 705(a)(2)(B) expenditures under the centralized partnership audit regime.* An allocation of an expenditure for any payment required to be made by a partnership under subchapter C of chapter 63 (relating to the centralized partnership audit regime and as described in § 301.6241–4(a) of this chapter) will be deemed to be in accordance with the partners' interests in the partnership, as provided in paragraph (b)(3) of this section, only if the expenditure is allocated in the manner described in paragraph (b)(2)(iii)(f) of this section and if the partners' distribution rights are reduced by the partners' shares of the imputed underpayment.

(xiii) *Partnership adjustments that do not result in an imputed underpayment under the centralized partnership audit regime.* An allocation of an item arising from a partnership adjustment that does not result in an imputed underpayment (as defined in § 301.6225–1(f) of this chapter) does not have substantial economic effect within the meaning of paragraph (b)(2) of this section. However, the allocation of such an item will be deemed to be in accordance with the partners' interests in the partnership if allocated in the manner in which the item would have been allocated in the reviewed year under the rules of this section, treating successors as defined in paragraph (b)(1)(viii)(b) of this section as reviewed year partners.

(xiv) *Partnership adjustments subject to an election under section 6226.* An allocation of an item arising from a partnership adjustment that results in an imputed underpayment for which an election is made under § 301.6226–1 of this chapter does not have substantial economic effect within the meaning of paragraph (b)(2) of this section. However, the allocation of such an item will be deemed to be in accordance with the partners' interests in the partnership if allocated in the adjustment year (as defined in § 301.6241–1(a)(1) of this chapter) in the manner in which the item would have been allocated under the rules of this section (or otherwise taken into account under subtitle A of the Code) in the reviewed year (as defined in § 301.6241–1(a)(8) of this chapter), followed by any intervening years (as defined in § 301.6226–3(b)(3) of this chapter), concluding with the reporting year (as defined in § 301.6226–3(a) of this chapter).

(xv) *Substantial economic effect under sections 168(h) and 514(c)(9)(E)(i)(II).* An allocation described in paragraphs (b)(4)(xi) through (xiv) of this section will be

deemed to have substantial economic effect for purposes of sections 168(h) and 514(c)(9)(E)(i)(II) if the allocation is deemed to be in accordance with the partners' interests in the partnership under the applicable rules set forth in paragraphs (b)(4)(xi) through (xiv) of this section.

\* \* \* \* \*

■ **Par. 3.** Section 1.705–1 is amended by adding paragraph (a)(10) to read as follows:

**§ 1.705–1 Determination of basis of partner's interest.**

(a) \* \* \*

(10) For rules relating to determining the adjusted basis of a partner's interest in a partnership following a final determination under subchapter C of chapter 63 of the Internal Revenue Code (relating to the centralized partnership audit regime), see §§ 301.6225–4 and 301.6226–4 of this chapter.

\* \* \* \* \*

■ **Par. 4.** Section 1.706–4 is amended by redesignating paragraphs (e)(2)(viii) through (xi) as paragraphs (e)(2)(ix) through (xii), respectively, and adding a new paragraph (e)(2)(viii) to read as follows:

**§ 1.706–4 Determination of distributive share when a partner's interest varies.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(viii) Any item arising from a final determination under subchapter C of chapter 63 of the Internal Revenue Code (relating to the centralized partnership audit regime) with respect to a partnership adjustment resulting in an imputed underpayment for which no election is made under § 301.6226–1 of this chapter or for which a pass-through partner (as defined in § 301.6241–1(a)(5)) pays an imputed underpayment under § 301.6226–3(e)(4).

\* \* \* \* \*

**PART 301—PROCEDURE AND ADMINISTRATION**

■ **Par. 5.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

■ **Par. 6.** Section 301.6221(a)–1 is added to read as follows:

**§ 301.6221(a)–1 Determination at partnership level.**

(a) *In general.* Except as otherwise provided under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and the regulations thereunder, any adjustment to a partnership-related item (as defined in § 301.6241–6) is determined, any tax

imposed by chapter 1 of subtitle A of the Internal Revenue Code (Code) attributable thereto is assessed and collected, and the applicability of any penalty, addition to tax, or additional amount that relates to an adjustment to any partnership-related item is determined at the partnership level under subchapter C of chapter 63. Any consideration necessary to make a determination at the partnership level under subchapter C of chapter 63, including the period of limitations on making partnership adjustments under section 6235 or facts necessary to calculate an imputed underpayment under section 6225, is also made at the partnership level except as otherwise provided under subchapter C of chapter 63 and the regulations thereunder. For rules relating to assessment and collection in a proceeding involving inconsistent treatment of a partnership-related item, see § 301.6222–1; in the case of modification under section 6225(c), see § 301.6225–2; in the case of an election under section 6226, see § 301.6226–3. For rules relating to tax imposed (including any amount required to be deducted or withheld) by chapter 2, 2A, 3 or 4 of subtitle A of the Code, see section 6241(9) and § 301.6241–7. For rules relating to special enforcement matters, see § 301.6241–8.

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 7.** Section 301.6222–1 is added to read as follows:

**§ 301.6222–1 Partner's return must be consistent with partnership return.**

(a) *Consistent treatment of partnership-related items*—(1) *In general.* The treatment of partnership-related items (as defined in § 301.6241–6) on a partner's return must be consistent with the treatment of such items on the partnership return in all respects, including the amount, timing, and characterization of such items. A partner has not satisfied the requirement of this paragraph (a) if the treatment of the partnership-related item on the partner's return is consistent with how such item was treated on a schedule or other information furnished to the partner by the partnership but inconsistent with the treatment of the item on the partnership return actually

filed. For rules relating to the election to be treated as having reported the inconsistency where the partner treats a partnership-related item consistently with an incorrect schedule or other information furnished by the partnership, see paragraph (d) of this section.

(2) *Partner that is a partnership.* The rules of this section apply to a partnership-partner (as defined in § 301.6241-1(a)(7)) regardless of whether the partnership-partner has made an election under section 6221(b) to elect out of the provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63). Accordingly, unless the requirements of paragraph (c) of this section are satisfied, a partnership-partner must treat partnership-related items of a partnership in which it is a partner consistent with the treatment of such items on the partnership return filed by the partnership in which it is a partner.

(3) *Partnership does not file a return.* A partner's treatment of a partnership-related item attributable to a partnership that does not file a return is per se inconsistent, unless the partner files a notice of inconsistent treatment under paragraph (c) of this section.

(4) *Treatment of items on a partnership return.* For purposes of this section, the treatment of a partnership-related item on a partnership return includes—

(i) The treatment of such item on the partnership's return of partnership income filed with the IRS under section 6031, and any amendment or supplement thereto, including an administrative adjustment request (AAR) filed pursuant to section 6227 and the regulations thereunder; and

(ii) The treatment of such item on any statement, schedule or list, and any amendment or supplement thereto, filed by the partnership with the Internal Revenue Service (IRS), including any statements filed pursuant to section 6226 and the regulations thereunder.

(5) *Examples.* The following examples illustrate the rules of this paragraph (a). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, and each partnership and its partners are calendar year taxpayers, unless otherwise stated.

*Example 1.* B is a partner in Partnership during 2018 and 2019. Both B and Partnership are calendar year taxpayers. In December 2018, Partnership receives an advance payment for services to be performed in 2019 and reports this amount as income on its partnership return for 2018. B includes its distributive share of income from the advance payment on B's income tax

return for 2019 and not on B's income tax return for 2018. B did not file a notice of inconsistent treatment with respect to the advanced payment. B's treatment of the income attributable to Partnership is inconsistent with the treatment of that item by Partnership on its partnership return.

*Example 2.* C is a partner in Partnership during 2018. Partnership incurred start-up costs before it was actively engaged in its business. Partnership capitalized these costs on its 2018 partnership return. C deducted his distributive share of the start-up costs on C's 2018 income tax return. C's treatment of the start-up costs is inconsistent with the treatment of that item by Partnership on its partnership return.

*Example 3.* D is a partner in Partnership during 2018. Partnership reports a loss of \$100,000 on its partnership return for 2018. On the 2018 Schedule K-1 attached to the partnership return, Partnership reports \$5,000 as D's distributive share of that loss. On the 2018 Schedule K-1 furnished to D, however, Partnership reports \$15,000 as D's distributive share of the loss. D reports the \$15,000 loss on D's 2018 income tax return. D has not satisfied the requirements of paragraph (a) of this section because D reported D's distributive share of the loss in a manner that is inconsistent with how D's distributive share of the loss was reported on the 2018 partnership return actually filed. See, however, paragraph (d) of this section for the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule.

*Example 4.* D was a partner in Partnership during 2018. Partnership reports a loss of \$100,000 on its partnership return for 2018. In 2020, Partnership files an AAR under section 6227 reporting that the amount of the loss on its 2018 partnership return is \$90,000, rather than \$100,000 as originally reported. Pursuant to section 6227 and the regulations thereunder, Partnership elects to have its partners take the adjustment into account, and furnishes D a statement showing D's share of the reduced loss for 2018. D fails to take his share of the reduced loss for 2018 into account in accordance with section 6227 and the regulations thereunder. D has not satisfied the requirements of paragraph (a) of this section because D has not taken into account his share of the loss in a manner consistent with how Partnership treated such items on the partnership return actually filed.

*Example 5.* E was a partner in Partnership during 2018. In 2021, Partnership receives a notice of final partnership adjustment in an administrative proceeding under subchapter C of chapter 63 with respect to Partnership's 2018 taxable year. Partnership properly elects the application of section 6226 and furnishes to E a statement of E's share of adjustments with respect to Partnership's 2018 taxable year. E fails to take his share of the adjustments into account in accordance with section 6226 and the regulations thereunder. E has not satisfied the requirements of paragraph (a) of this section because E has not taken into account his share of adjustments with respect to Partnership's 2018 taxable year in a manner consistent

with how Partnership treated such items on the partnership return actually filed.

*Example 6.* In 2018, E is a partner in Partnership. E is a partnership-partner with a 2018 taxable year that ends on the same day as Partnership's 2018 taxable year. E has filed a valid election under section 6221(b) in effect with respect to E's 2018 partnership taxable year. Notwithstanding E's election under section 6221(b) for its 2018 taxable year, E is subject to section 6222 for taxable year 2018. E must treat, on its 2018 partnership return, any items attributable to E's interest in Partnership in a manner that is consistent with the treatment of those items on the 2018 partnership return actually filed by Partnership.

(b) *Effect of inconsistent treatment—*  
(1) *Determination of underpayment of tax resulting from inconsistent treatment.* If a partner fails to satisfy the requirements of paragraph (a) of this section, unless the partner provides notice in accordance with paragraph (c) of this section, the IRS may adjust the inconsistently reported partnership-related item on the partner's return to make it consistent with the treatment of such item on the partnership return and determine the underpayment of tax that results from that adjustment. For purposes of this section, the underpayment of tax is the amount by which the correct tax, as determined by making the partner's return consistent with the partnership return, exceeds the tax shown on the partner's return.

(2) *Assessment and collection of tax.* The IRS may assess and collect any underpayment of tax resulting from an adjustment described in paragraph (b)(1) of this section in the same manner as if the underpayment of tax was on account of a mathematical or clerical error appearing on the partner's return, except that the procedures under section 6213(b)(2) for requesting abatement of an assessment do not apply.

(3) *Effect when partner is a partnership.* If the partner is itself a partnership (a partnership-partner), any adjustment on account of such partnership-partner's failure to satisfy the requirements of paragraph (a) of this section will be treated as an adjustment on account of a mathematical or clerical error under section 6213(b), except that the procedures under section 6213(b)(2) for requesting abatement of an assessment do not apply. See section 6232(d)(1)(B) and § 301.6232-1(d).

(4) *Examples.* The following examples illustrate the rules of this paragraph (b).

*Example 1.* D, an individual, is a partner in Partnership. D and Partnership are both calendar year taxpayers and Partnership does not have an election under section 6221(b) in effect for its 2018 taxable year. On its partnership return for taxable year 2018,

Partnership reports \$100,000 in ordinary income. On the Schedule K–1 attached to the partnership return, as well as on the Schedule K–1 furnished to D, Partnership reports \$15,000 as D's distributive share of the \$100,000 in ordinary income. D reports only \$5,000 of the \$15,000 of ordinary income on his 2018 income tax return. The IRS may determine the amount of tax that results from adjusting the ordinary income attributable to D's interest in Partnership reported on D's 2018 income tax return from \$5,000 to \$15,000 and assess that resulting underpayment in tax as if it was on account of a mathematical or clerical error appearing on D's return. D may not request an abatement of that assessment under section 6213(b).

*Example 2.* F was a partner in Partnership during 2018. In 2021, Partnership receives a notice of final partnership adjustment in an administrative proceeding under subchapter C of chapter 63 with respect to Partnership's 2018 taxable year. Partnership properly elects the application of section 6226 and files with the IRS a statement of F's share of adjustments with respect to Partnership's 2018 taxable year. F fails to report one adjustment, F's share of a decrease in the amount of losses for 2018, on F's return as required by section 6226 and the regulations thereunder. The IRS may determine the amount of tax that results from adjusting the decrease in the amount of losses on F's return to be consistent with the amount included on the section 6226 statement filed with the IRS and may assess the resulting underpayment in tax as if it was on account of a mathematical or clerical error appearing on F's return. F may not request an abatement of that assessment under section 6213(b).

(c) *Notification to the IRS when items attributable to a partnership are treated inconsistently—(1) In general.*

Paragraphs (a) and (b) of this section (regarding the consistent treatment of partnership-related items and the effect of inconsistent treatment) do not apply to partnership-related items identified as inconsistent (or that may be inconsistent) in a statement that the partner provides to the IRS according to the forms, instructions, and other guidance prescribed by the IRS. Instead, the procedures in paragraph (c)(3) of this section apply. A statement does not identify an inconsistency for purposes of this paragraph (c) unless it is attached to the partner's return on which the partnership-related item is treated inconsistently.

(2) *Coordination with section 6223.* Paragraph (c)(1) of this section is not applicable to a partnership-related item the treatment of which is binding on the partner because of actions taken by the partnership under subchapter C of chapter 63 or because of a final decision in a proceeding with respect to the partnership under subchapter C of chapter 63. Accordingly, the provisions of paragraph (c)(1) of this section do not

apply with respect to the partner's treatment of a partnership-related item reflected on an AAR under section 6227 or a statement under section 6226 filed by the partnership with the IRS to which the partner is bound under section 6223. Therefore, if the partner's treatment of a partnership-related item reflected on an AAR or statement described in section 6226 is not consistent with the treatment of the partnership to which the partner is bound under section 6223, the provisions of section 6222(c) and paragraph (c)(1) of this section do not apply with respect to such item, and any resulting underpayment may be assessed and collected in accordance with paragraph (b)(2) of this section.

(3) *Partner protected only to extent of notification.* A partner who reports the inconsistent treatment of a partnership-related item is not subject to paragraphs (a) and (b) of this section only with respect to those items identified in the statement described in paragraph (c)(1) of this section. Thus, if a partner notifying the IRS with respect to one partnership-related item does not report the inconsistent treatment of another partnership-related item, the IRS may determine the amount of tax that results from adjusting the unidentified, inconsistently reported item on the partner's return to make it consistent with the treatment of such item on the partnership return, and assess the resulting underpayment of tax in accordance with paragraph (b)(2) of this section.

(4) *Adjustment after notification—(i) In general.* If a partner notifies the IRS of the inconsistent treatment of a partnership-related item in accordance with paragraph (c)(1) of this section, and the IRS disagrees with the inconsistent treatment, the IRS may adjust the identified, inconsistently reported item in a proceeding with respect to the partner. Nothing in this paragraph (c)(4)(i) precludes the IRS from also conducting a proceeding with respect to the partnership.

(ii) *Adjustments in partner proceeding.* In a proceeding with respect to a partner described in paragraph (c)(4)(i) of this section, the IRS may adjust any identified, inconsistently reported partnership-related item to make the item consistent with the treatment of that item on the partnership return or determine that the correct treatment of such item differs from the treatment on the partnership return and instead adjust the item to reflect the correct treatment, notwithstanding the treatment of that item on the partnership return. The IRS may also adjust any item on the

partner's return, including items that are not partnership-related items. Any final decision with respect to an inconsistent position in a proceeding to which the partnership is not a party is not binding on the partnership.

(5) *Examples.* The following examples illustrate the rules of this paragraph (c). For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, and each partnership and partner is a calendar year taxpayer, unless otherwise stated.

*Example 1.* B is a partner in Partnership during 2018. B treats a deduction and a capital gain attributable to Partnership on B's 2018 income tax return in a manner that is inconsistent with the treatment of those items by Partnership on its 2018 partnership return. B reports the inconsistent treatment of the deduction in accordance with paragraph (c)(1) of this section, but not the inconsistent treatment of the gain. Because B did not notify the IRS of the inconsistent treatment of the gain in accordance with paragraph (c)(1) of this section, the IRS may determine the amount of tax that results from adjusting the gain reported on B's 2018 income tax return in order to make the treatment of that gain consistent with how the gain was treated on Partnership's partnership return. Pursuant to paragraph (c)(3) of this section, the IRS may assess and collect the underpayment of tax resulting from the adjustment to the gain as if it was on account of a mathematical or clerical error appearing on B's return.

*Example 2.* On its 2018 partnership return, Partnership treats partner E's distributive share of ordinary loss attributable to Partnership as \$8,000. E, however, claims an ordinary loss of \$9,000 as attributable to Partnership on its 2018 income tax return and notifies the IRS of the inconsistent treatment in accordance with paragraph (c)(1) of this section. As a result of the notice of inconsistent treatment, the IRS conducts a separate proceeding under subchapter B of chapter 63 of the Internal Revenue Code with respect to E's 2018 income tax return, a proceeding to which Partnership is not a party. During the proceeding, the IRS determines that the proper amount of E's distributive share of the ordinary loss from Partnership is \$3,000. During the same proceeding, the IRS also determines that E overstated a charitable contribution deduction in the amount of \$2,500 on its 2018 income tax return. The determination of the adjustment of E's share of ordinary loss is not binding on Partnership. The charitable contribution deduction is not attributable to Partnership or to another partnership subject to the provisions of subchapter C of chapter 63. The IRS may determine the amount of tax that results from adjusting the \$9,000 ordinary loss deduction to \$3,000 and from adjusting the charitable contribution deduction. Pursuant to paragraph (c)(4)(ii) of this section, the IRS is not limited to only adjusting the ordinary loss of \$9,000, as originally reported on E's partner return, to \$8,000, as originally reported by Partnership on its partnership return, nor is the IRS prohibited from adjusting the charitable

contribution deduction in the proceeding with respect to E.

(d) *Partner receiving incorrect information*—(1) *In general.* A partner is treated as having complied with section 6222(c)(1)(B) and paragraph (c)(1) of this section with respect to a partnership-related item if the partner—

(i) Demonstrates that the treatment of such item on the partner's return is consistent with the treatment of that item on the statement, schedule, or other form prescribed by the IRS and furnished to the partner by the partnership, and

(ii) The partner makes an election in accordance with paragraph (d)(2) of this section.

(2) *Time and manner of making election*—(i) *In general.* An election under paragraph (d) of this section must be filed in writing with the IRS office set forth in the notice that notified the partner of the inconsistency no later than 60 days after the date of such notice.

(ii) *Contents of election.* The election described in paragraph (d)(2)(i) of this section must be—

(A) Clearly identified as an election under section 6222(c)(2)(B);

(B) Signed by the partner making the election;

(C) Accompanied by a copy of the statement, schedule, or other form furnished to the partner by the partnership and a copy of the IRS notice that notified the partner of the inconsistency; and

(D) Include any other information required in forms, instructions, or other guidance prescribed by the IRS.

(iii) *Treatment of partnership-related item is unclear.* Generally, the requirement described in paragraph (d)(2)(ii)(C) of this section will be satisfied by attaching a copy of the statement, schedule, or other form furnished to the partner by the partnership to the election (in addition to a copy of the IRS notice that notified the partner of the inconsistency). However, if it is not clear from the statement, schedule, or other form furnished by the partnership that the partner's treatment of the partnership-related item on the partner's return is consistent, the election must also include an explanation of how the treatment of such item on the statement, schedule, or other form furnished by the partnership is consistent with the treatment of the item on the partner's return, including with respect to the characterization, timing, and amount of such item.

(3) *Example.* The following example illustrates the rules of this paragraph

(d). For purposes of this example, the partnership is subject to subchapter C of chapter 63 and the partnership and its partners are calendar year taxpayers.

*Example.* E is a partner in Partnership for 2018. On its 2018 partnership return, Partnership reports that E's distributive share of ordinary income attributable to Partnership is \$1,000. Partnership furnishes to E a Schedule K-1 for 2018 showing \$500 as E's distributive share of ordinary income. E reports \$500 of ordinary income attributable to Partnership on its 2018 income tax return consistent with the Schedule K-1 furnished to E. The IRS notifies E that E's treatment of the ordinary income attributable to Partnership on its 2018 income tax return is inconsistent with how Partnership treated the ordinary income allocated to E on its 2018 partnership return. Within 60 days of receiving the notice from the IRS of the inconsistency, E files an election with the IRS in accordance with paragraph (d)(2) of this section. Because E made a valid election under section 6222(c)(2)(B) and paragraph (d)(1) of this section, E is treated as having notified the IRS of the inconsistency with respect to the ordinary income attributable to Partnership under paragraph (c)(1) of this section.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100-22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par 8.** Section 301.6225-1 is added to read as follows:

**§ 301.6225-1 Partnership Adjustment by the Internal Revenue Service.**

(a) *Imputed underpayment based on partnership adjustments*—(1) *In general.* In the case of any partnership adjustments (as defined in § 301.6241-1(a)(6)) by the Internal Revenue Service (IRS), if the adjustments result in an imputed underpayment (as determined in accordance with paragraph (b) of this section), the partnership must pay an amount equal to such imputed underpayment in accordance with paragraph (a)(2) of this section. If the adjustments do not result in an imputed underpayment (as described in paragraph (f) of this section), such adjustments must be taken into account by the partnership in the adjustment year (as defined in § 301.6241-1(a)(1)) in accordance with § 301.6225-3. Partnership adjustments may result in more than one imputed underpayment pursuant to paragraph (g) of this section. Each imputed underpayment determined under this section is based

solely on partnership adjustments with respect to a single taxable year.

(2) *Partnership pays the imputed underpayment.* An imputed underpayment (determined in accordance with paragraph (b) of this section and included in a notice of final partnership adjustment (FPA) under section 6231(a)(3)) must be paid by the partnership in the same manner as if the imputed underpayment were a tax imposed for the adjustment year in accordance with § 301.6232-1. The FPA will include the amount of any imputed underpayment, as modified under § 301.6225-2 if applicable, unless the partnership waives its right to such FPA under section 6232(d)(2). See § 301.6232-1(d)(2). For the alternative to payment of the imputed underpayment by the partnership, see § 301.6226-1. If a partnership pays an imputed underpayment, the partnership's expenditure for the imputed underpayment is taken into account by the partnership in accordance with § 301.6241-4. For interest and penalties with respect to an imputed underpayment, see section 6233.

(3) *Imputed underpayment set forth in notice of proposed partnership adjustment.* An imputed underpayment set forth in a notice of proposed partnership adjustment (NOPPA) under section 6231(a)(2) is determined in accordance with paragraph (b) of this section without regard to any modification under § 301.6225-2. Modifications under § 301.6225-2, if allowed by the IRS, may change the amount of an imputed underpayment set forth in the NOPPA and determined in accordance with paragraph (b) of this section. Only the partnership adjustments set forth in a NOPPA are taken into account for purposes of determining an imputed underpayment under this section and any modification under § 301.6225-2.

(b) *Determination of an imputed underpayment*—(1) *In general.* In the case of any partnership adjustment by the IRS, an imputed underpayment is determined by—

(i) Grouping the partnership adjustments in accordance with paragraph (c) of this section and, if appropriate, subgrouping such adjustments in accordance with paragraph (d) of this section;

(ii) Netting the adjustments in accordance with paragraph (e) of this section;

(iii) Calculating the total netted partnership adjustment in accordance with paragraph (b)(2) of this section;

(iv) Multiplying the total netted partnership adjustment by the highest rate of Federal income tax in effect for



the reviewed year under section 1 or 11; and

(v) Increasing or decreasing the product that results under paragraph (b)(1)(iv) of this section by—

(A) Any amounts treated under paragraph (e)(3)(ii) of this section as net positive adjustments (as defined in paragraph (e)(4)(i) of this section); and

(B) Any net negative adjustments (as defined in paragraph (e)(4)(ii) of this section), except net negative adjustments resulting from reallocation adjustments to credits as described in paragraph (d)(3)(ii) of this section and creditable tax expenditures described in paragraph (e)(3)(iii) of this section.

(2) *Calculation of the total netted partnership adjustment.* For purposes of determining an imputed underpayment under paragraph (b)(1) of this section, the *total netted partnership adjustment* is the sum of all net positive adjustments in the reallocation grouping described in paragraph (c)(2) of this section and the residual grouping described in paragraph (c)(5) of this section.

(3) *Adjustments to items for which tax has been collected under chapters 3 and 4.* A partnership adjustment is disregarded for purposes of calculating the total netted partnership adjustment under paragraph (b)(2) of this section to the extent that the IRS has collected the tax required to be withheld under chapter 3 or chapter 4 (as defined in § 301.6241-7(b)(2)(ii) and (iii)) that is attributable to the partnership adjustment. See § 301.6241-7(b)(3) for rules that apply when a partnership pays an imputed underpayment that includes a partnership adjustment to an amount subject to withholding (as defined in § 301.6241-7(b)(2)(i)) under chapter 3 or chapter 4 for which such tax has not yet been collected.

(4) *Treatment of adjustment as zero for purposes of calculating the imputed underpayment.* If the effect of a partnership adjustment under chapter 1 of subtitle A of the Internal Revenue Code (Code) to any person is reflected in another adjustment taken into account under this section, the IRS may treat an adjustment as zero solely for purposes of calculating the imputed underpayment.

(c) *Grouping of partnership adjustments—(1) In general.* To determine an imputed underpayment under paragraph (b) of this section, partnership adjustments are placed into one of four groupings. These groupings are the reallocation grouping described in paragraph (c)(2) of this section, the credit grouping described in paragraph (c)(3) of this section, the creditable expenditure grouping described in

paragraph (c)(4) of this section, and the residual grouping described in paragraph (c)(5) of this section.

Adjustments in groupings may be placed in subgroupings, as appropriate, in accordance with paragraph (d) of this section. The IRS may, in its discretion, group adjustments in a manner other than the manner described in this paragraph (c) when such grouping would appropriately reflect the facts and circumstances. For requests to modify the groupings, see § 301.6225-2(d)(6).

(2) *Reallocation grouping—(i) In general.* Any adjustment that allocates or reallocates a partnership-related item to and from a particular partner or partners is a *reallocation adjustment*. Except in the case of an adjustment to a credit (as described in paragraph (c)(3) of this section) or to a creditable expenditure (as described in paragraph (c)(4) of this section), reallocation adjustments are placed in the reallocation grouping. Adjustments that reallocate a credit to and from a particular partner or partners are placed in the credit grouping (see paragraph (c)(3) of this section), and adjustments that reallocate a creditable expenditure to and from a particular partner or partners are placed in the creditable expenditure grouping (see paragraph (c)(4) of this section).

(ii) *Each reallocation adjustment results in at least two separate adjustments.* Each reallocation adjustment generally results in at least two separate adjustments. One adjustment reverses the effect of the improper allocation of a partnership-related item, and the other adjustment effectuates the proper allocation of the partnership-related item. Generally, a reallocation adjustment results in one positive adjustment (as defined in paragraph (d)(2)(iii) of this section) and one negative adjustment (as defined in paragraph (d)(2)(ii) of this section).

(3) *Credit grouping.* Each adjustment to a partnership-related item that is reported or could be reported by a partnership as a credit on the partnership's return, including a reallocation adjustment, is placed in the credit grouping.

(4) *Creditable expenditure grouping—(i) In general.* Each adjustment to a creditable expenditure, including a reallocation adjustment to a creditable expenditure, is placed in the creditable expenditure grouping.

(ii) *Adjustment to a creditable expenditure—(A) In general.* For purposes of this section, an adjustment to a partnership-related item is treated as an adjustment to a creditable expenditure if any person could take the

item that is adjusted (or item as adjusted if the item was not originally reported by the partnership) as a credit. See § 1.704-1(b)(4)(ii) of this chapter. For instance, if the adjustment is a reduction of qualified research expenses, the adjustment is to a creditable expenditure for purposes of this section because any person allocated the qualified research expenses by the partnership could claim a credit with respect to their allocable portion of such expenses under section 41, rather than a deduction under section 174.

(B) *Creditable foreign tax expenditures.* The creditable expenditure grouping includes each adjustment to a creditable foreign tax expenditure (CFTE) as defined in § 1.704-1(b)(4)(viii)(b) of this chapter, including any reallocation adjustment to a CFTE.

(5) *Residual grouping—(i) In general.* Any adjustment to a partnership-related item not described in paragraph (c)(2), (3), or (4) of this section is placed in the residual grouping.

(ii) *Adjustments to partnership-related items that are not allocated under section 704(b).* The residual grouping includes any adjustment to a partnership-related item that derives from an item that would not have been required to be allocated by the partnership to a reviewed year partner under section 704(b).

(6) *Recharacterization adjustments—(i) Recharacterization adjustment defined.* An adjustment that changes the character of a partnership-related item is a recharacterization adjustment. For instance, an adjustment that changes a loss from ordinary to capital or from active to passive is a recharacterization adjustment.

(ii) *Grouping recharacterization adjustments.* A recharacterization adjustment is placed in the appropriate grouping as described in paragraphs (c)(2) through (5) of this section.

(iii) *Recharacterization adjustments result in two partnership adjustments.* In general, a recharacterization adjustment results in at least two separate adjustments in the appropriate grouping under paragraph (c)(6)(ii) of this section. One adjustment reverses the improper characterization of the partnership-related item, and the other adjustment effectuates the proper characterization of the partnership-related item. A recharacterization adjustment results in two adjustments regardless of whether the amount of the partnership-related item is being adjusted. Generally, recharacterization adjustments result in one positive



adjustment and one negative adjustment.

(d) *Subgroupings*—(1) *In general.* If any partnership adjustment within any grouping described in paragraph (c) of this section is a negative adjustment, the adjustments within that grouping are subgrouped in accordance with this paragraph (d). If all partnership adjustments within the groupings are positive adjustments, this paragraph (d) does not apply, and no adjustment within the groupings is subgrouped in accordance with this paragraph (d). The IRS may, in its discretion, subgroup adjustments in a manner other than the manner described in this paragraph (d) when such subgrouping would appropriately reflect the facts and circumstances. For requests to modify the subgroupings, see § 301.6225–2(d)(6).

(2) *Definition of negative adjustments and positive adjustments*—(i) *In general.* For purposes of this section, partnership adjustments made by the IRS are treated as follows:

(A) An increase in an item of gain is treated as an increase in an item of income;

(B) A decrease in an item of gain is treated as a decrease in an item of income;

(C) An increase in an item of loss or deduction is treated as a decrease in an item of income; and

(D) A decrease in an item of loss or deduction is treated as an increase in an item of income.

(ii) *Negative adjustment.* A *negative adjustment* is any adjustment that is a decrease in an item of income, a partnership adjustment treated under paragraph (d)(2)(i) of this section as a decrease in an item of income, or an increase in an item of credit.

(iii) *Positive adjustment*—(A) *In general.* A *positive adjustment* is any adjustment that is not a negative adjustment as defined in paragraph (d)(2)(ii) of this section.

(B) *Treatment of adjustments that cannot be allocated under section 704(b).* For purposes of determining an imputed underpayment under this section, an adjustment described in paragraph (c)(5)(ii) of this section that could result in an increase in income or decrease in a loss, deduction, or credit for any person without regard to any particular person's specific circumstances is treated as a positive adjustment to income to the extent appropriate.

(3) *Subgrouping rules*—(i) *In general.* Except as otherwise provided in this paragraph (d)(3), an adjustment is subgrouped according to how the adjustment would be required to be

taken into account separately under section 702(a) or any other provision of the Code or regulations applicable to the adjusted partnership-related item. For purposes of creating subgroupings under this section, if any adjustment could be subject to any preference, limitation, or restriction under the Code (or not allowed, in whole or in part, against ordinary income) if taken into account by any person, the adjustment is placed in a separate subgrouping from all other adjustments within the grouping. A negative adjustment that is not otherwise required to be placed in its own subgrouping under this paragraph (d)(3) must be placed in the same subgrouping as another adjustment if the negative adjustment and the other adjustment would have been properly netted at the partnership level and such netted amount would have been required to be allocated to the partners of the partnership as a single partnership-related item for purposes of section 702(a) or other provision of the Code and regulations.

(ii) *Subgrouping reallocation adjustments*—(A) *Reallocation adjustments in the reallocation grouping.* Each positive adjustment and each negative adjustment resulting from a reallocation adjustment as described in paragraph (c)(2)(ii) of this section is placed in its own separate subgrouping within the reallocation grouping. For instance, if the reallocation adjustment reallocates a deduction from one partner to another partner, the decrease in the deduction (positive adjustment) allocated to the first partner is placed in a subgrouping within the reallocation grouping separate from the increase in the deduction (negative adjustment) allocated to the second partner. If a particular partner or group of partners has two or more reallocation adjustments allocable to such partner or group, such adjustments may be subgrouped in accordance with paragraph (d)(3)(i) of this section and netted in accordance with paragraph (e) of this section.

(B) *Reallocation adjustments in the credit grouping.* In the case of a reallocation adjustment to a credit, which is placed in the credit grouping pursuant to paragraph (c)(3) of this section, the decrease in credits allocable to one partner or group of partners is treated as a positive adjustment, and the increase in credits allocable to another partner or group of partners is treated as a negative adjustment. Each positive adjustment and each negative adjustment resulting from a reallocation adjustment to credits is placed in its own separate subgrouping within the credit grouping.

(iii) *Subgroupings within the creditable expenditure grouping*—(A) *In general.* Each adjustment in the creditable expenditure grouping described in paragraph (c)(4) of this section is subgrouped in accordance with this paragraph (d)(3)(iii).

(B) *Subgroupings for adjustments to CFTEs.* Each adjustment to a CFTE is subgrouped based on the separate category of income to which the CFTE relates in accordance with section 904(d) and the regulations thereunder, and to account for any different allocation of the CFTE between partners. Two or more adjustments to CFTEs are included within the same subgrouping only if each adjustment relates to CFTEs in the same separate category, and each adjusted partnership-related item would be allocated to the partners in the same ratio had those items been properly reflected on the partnership return for the reviewed year.

(C) *Other creditable expenditures.* [Reserved]

(iv) *Subgrouping recharacterization adjustments.* Each positive adjustment and each negative adjustment resulting from a recharacterization adjustment as described in paragraph (c)(6) of this section is placed in its own separate subgrouping within the residual grouping. If a particular partner or group of partners has two or more recharacterization adjustments allocable to such partner or group, such adjustments may be subgrouped in accordance with paragraph (d)(3)(i) of this section and netted in accordance with paragraph (e) of this section.

(e) *Netting adjustments within each grouping or subgrouping*—(1) *In general.* All adjustments within a subgrouping determined in accordance with paragraph (d) of this section are netted in accordance with this paragraph (e) to determine whether there is a net positive adjustment (as defined in paragraph (e)(4)(i) of this section) or net negative adjustment (as defined in paragraph (e)(4)(ii) of this section) for that subgrouping. If paragraph (d) of this section does not apply because a grouping only includes positive adjustments, all adjustments in that grouping are netted in accordance with this paragraph (e). For purposes of this paragraph (e), netting means summing all adjustments together within each grouping or subgrouping, as appropriate.

(2) *Limitations on netting adjustments.* Positive adjustments and negative adjustments may only be netted against each other if they are in the same grouping or subgrouping in accordance with the rules in paragraphs

(c) and (d) of this section. An adjustment in one grouping or subgrouping may not be netted against an adjustment in any other grouping or subgrouping. Adjustments from one taxable year may not be netted against adjustments from another taxable year.

(3) *Results of netting adjustments within groupings or subgroupings*—(i) *Groupings other than the credit and creditable expenditure groupings.* Except as described in paragraphs (e)(3)(ii) and (iii) of this section, each net positive adjustment (as defined in paragraph (e)(4)(i) of this section) with respect to a particular grouping or subgrouping that results after netting the adjustments in accordance with this paragraph (e) is included in the calculation of the total netted partnership adjustment under paragraph (b)(2) of this section. Each net negative adjustment (as defined in paragraph (e)(4)(ii) of this section) with respect to a grouping or subgrouping that results after netting the adjustments in accordance with this paragraph (e) is excluded from the calculation of the total netted partnership adjustment under paragraph (b)(2) of this section. Adjustments underlying a net negative adjustment described in the preceding sentence are adjustments that do not result in an imputed underpayment (as described in paragraph (f) of this section).

(ii) *Credit grouping.* Any net positive adjustment or net negative adjustment in the credit grouping (including any such adjustment with respect to a subgrouping within the credit grouping) is excluded from the calculation of the total netted partnership adjustment. A net positive adjustment or net negative adjustment described in this paragraph (e)(3)(ii) is taken into account under paragraph (b)(1)(v) of this section, except for negative adjustments to credits resulting from a reallocation adjustment that were placed in a separate subgrouping pursuant to paragraph (d)(3)(ii)(B) of this section. A negative adjustment to a credit placed in its separate subgrouping under paragraph (d)(3)(ii)(B) of this section is treated as an adjustment that does not result in an imputed underpayment in accordance with paragraph (f)(1)(i) of this section.

(iii) *Treatment of creditable expenditures*—(A) *Creditable foreign tax expenditures.* A net decrease to a CFTE in any CFTE subgrouping (as described in paragraph (d)(3)(iii)(B) of this section) is treated as a net positive adjustment described in paragraph (e)(3)(ii) of this section. A net increase to a CFTE in any CFTE subgrouping is treated as a net

negative adjustment described in paragraph (e)(3)(i) of this section.

(B) *Other creditable expenditures.* [Reserved]

(4) *Net positive adjustment and net negative adjustment defined*—(i) *Net positive adjustment.* A net positive adjustment means an amount that is greater than zero which results from netting adjustments within a grouping or subgrouping in accordance with this paragraph (e). A net positive adjustment includes a positive adjustment that was not netted with any other adjustment. A net positive adjustment includes a net decrease in an item of credit.

(ii) *Net negative adjustment.* A net negative adjustment means any amount which results from netting adjustments within a grouping or subgrouping in accordance with this paragraph (e) that is not a net positive adjustment (as defined in paragraph (e)(4)(i) of this section). A net negative adjustment includes a negative adjustment that was not netted with any other adjustment.

(f) *Partnership adjustments that do not result in an imputed underpayment*—(1) *In general.* Except as otherwise provided in paragraph (e) of this section, a partnership adjustment does not result in an imputed underpayment if—

(i) After grouping, subgrouping, and netting the adjustments as described in paragraphs (c), (d), and (e) of this section, the result of netting with respect to any grouping or subgrouping that includes a particular partnership adjustment is a net negative adjustment (as described in paragraph (e)(4)(ii) of this section); or

(ii) The calculation under paragraph (b)(1) of this section results in an amount that is zero or less than zero.

(2) *Treatment of an adjustment that does not result in an imputed underpayment.* Any adjustment that does not result in an imputed underpayment (as described in paragraph (b)(2) of this section) is taken into account by the partnership in the adjustment year in accordance with § 301.6225-3. If the partnership makes an election pursuant to section 6226 with respect to an imputed underpayment, the adjustments that do not result in that imputed underpayment that are associated with that imputed underpayment (as described in paragraph (g)(2)(iii)(B) of this section) are taken into account by the reviewed year partners in accordance with § 301.6226-3.

(g) *Multiple imputed underpayments in a single administrative proceeding*—(1) *In general.* The IRS, in its discretion, may determine that partnership adjustments for the same partnership

taxable year result in more than one imputed underpayment. The determination of whether there is more than one imputed underpayment for any partnership taxable year, and if so, which partnership adjustments are taken into account to calculate any particular imputed underpayment is based on the facts and circumstances and nature of the partnership adjustments. See § 301.6225-2(d)(6) for modification of the number and composition of imputed underpayments.

(2) *Types of imputed underpayments*—(i) *In general.* There are two types of imputed underpayments: A general imputed underpayment (described in paragraph (d)(2)(ii) of this section) and a specific imputed underpayment (described in paragraph (d)(2)(iii) of this section). Each type of imputed underpayment is separately calculated in accordance with this section.

(ii) *General imputed underpayment.* The general imputed underpayment is calculated based on all adjustments (other than adjustments that do not result in an imputed underpayment under paragraph (f) of this section) that are not taken into account to determine a specific imputed underpayment under paragraph (g)(2)(iii) of this section. There is only one general imputed underpayment in any administrative proceeding. If there is one imputed underpayment in an administrative proceeding, it is a general imputed underpayment and may take into account adjustments described in paragraph (g)(2)(iii) of this section, if any, and all adjustments that do not result in that general imputed underpayment (as described in paragraph (e) of this section) are associated with that general imputed underpayment.

(iii) *Specific imputed underpayment*—(A) *In general.* The IRS may, in its discretion, designate a specific imputed underpayment with respect to adjustments to a partnership-related item or items that were allocated to one partner or a group of partners that had the same or similar characteristics or that participated in the same or similar transaction or on such other basis as the IRS determines properly reflects the facts and circumstances. The IRS may designate more than one specific imputed underpayment with respect to any partnership taxable year. For instance, in a single partnership taxable year there may be a specific imputed underpayment with respect to adjustments related to a transaction affecting some, but not all, partners of the partnership (such as adjustments

that are specially allocated to certain partners) and a second specific imputed underpayment with respect to adjustments resulting from a reallocation of a distributive share of income from one partner to another partner. The IRS may, in its discretion, determine that partnership adjustments that could be taken into account to calculate one or more specific imputed underpayments under this paragraph (g)(2)(iii)(A) for a partnership taxable year are more appropriately taken into account in determining the general imputed underpayment for such taxable year. For instance, the IRS may determine that it is more appropriate to calculate only the general imputed underpayment if, when calculating the specific imputed underpayment requested by the partnership, there is an increase in the number of the partnership adjustments that after grouping and netting result in net negative adjustments and are disregarded in calculating the specific imputed underpayment.

(B) *Adjustments that do not result in an imputed underpayment associated with a specific imputed underpayment.* If the IRS designates a specific imputed underpayment, the IRS will designate which adjustments that do not result in an imputed underpayment, if any, are appropriate to associate with that specific imputed underpayment. If the adjustments underlying that specific imputed underpayment are reallocation adjustments or recharacterization adjustments, the net negative adjustment that resulted from the reallocation or recharacterization is associated with the specific imputed underpayment. Any adjustments that do not result in an imputed underpayment that are not associated with a specific imputed underpayment under this paragraph (d)(2)(iii)(B) are associated with the general imputed underpayment.

(h) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63 of the Code, each partnership and its partners are calendar year taxpayers, all partners are U.S. persons (unless otherwise stated), the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and no partnership requests modification under § 301.6225-2.

*Example 1.* Partnership reports on its 2019 partnership return \$100 of ordinary income and an ordinary deduction of <\$70>. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that ordinary income was

\$105 instead of \$100 (\$5 adjustment) and that the ordinary deduction was <\$80> instead of <\$70> (<\$10> adjustment). Pursuant to paragraph (c) of this section, the adjustments are both in the residual grouping. The <\$10> adjustment to the ordinary deduction would result in a decrease in the imputed underpayment if netted with the \$5 adjustment to ordinary income. Because the <\$10> adjustment to the ordinary deduction might be limited if taken into account by any person, it is grouped in a separate subgrouping from the \$5 adjustment to ordinary income. The total netted partnership adjustment is \$5, which results in an imputed underpayment of \$2. The <\$10> adjustment to the ordinary deduction is a net negative amount and is an adjustment that does not result in an imputed underpayment which is taken into account by Partnership in the adjustment year in accordance with § 301.6225-3.

*Example 2.* The facts are the same as *Example 1* of this paragraph (h), except that the <\$10> adjustment would not be limited if taken into account by any of its partners (direct or indirect). The IRS may, in its discretion, group the \$5 adjustment and the <\$10> adjustment together in the residual grouping. As a result, the \$5 and the <\$10> adjustments are netted under paragraph (e) of this section. Such netting results in a net negative adjustment (as defined under paragraph (e)(4)(ii)) in the residual grouping of <\$5> under paragraph (e) of this section. Pursuant to paragraph (f) of this section, the <\$5> net negative adjustment is an adjustment that does not result in an imputed underpayment. Therefore, since the only net adjustment is an adjustment that does not result in an imputed underpayment, there is no imputed underpayment.

*Example 3.* Partnership reports on its 2019 partnership return ordinary income of \$300, long-term capital gain of \$125, long-term capital loss of <\$75>, a depreciation deduction of <\$100>, and a tax credit that can be claimed by the partnership of \$5. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS determines that ordinary income is \$500 (\$200 adjustment), long-term capital gain is \$200 (\$75 adjustment), long-term capital loss is <\$25> (\$50 adjustment), the depreciation deduction is <\$70> (\$30 adjustment), and the tax credit is \$3 (\$2 adjustment). Pursuant to paragraph (c) of this section, the tax credit is in the credit grouping under paragraph (c)(3) of this section. The remaining adjustments are part of the residual grouping under paragraph (c)(5) of this section. Pursuant to paragraph (d)(2) of this section, all of the adjustments in the residual grouping are positive adjustments. Because there are no negative adjustments, there is no need for further subgrouping within the residual grouping. Under paragraph (b)(2), the adjustments in the residual grouping are summed for a total netted partnership adjustment of \$355. Under paragraph (b)(1)(iv) of this section, the total netted partnership adjustment is multiplied by 40 percent (highest tax rate in effect), which results in \$142. Under paragraph (b)(1)(iv) of this section, the \$142 is increased by the \$2 credit adjustment, resulting in an imputed underpayment of \$144.

*Example 4.* Partnership reported on its 2019 partnership return long-term capital gain of \$125 and long-term capital loss of <\$75>. In an administrative proceeding with respect to Partnership's 2019 taxable year, the IRS determines the long-term capital gain should have been reported as ordinary income of \$125. There are no other adjustments for the 2019 taxable year. This recharacterization adjustment results in two adjustments in the residual grouping pursuant to paragraph (c)(6) of this section: an increase in ordinary income of \$125 (\$125 adjustment) as well as a decrease of long-term capital gain of \$125 (<\$125> adjustment). The decrease in long-term capital gain is a negative adjustment under paragraph (d)(2)(ii) of this section and the increase in ordinary income is a positive adjustment under paragraph (d)(2)(iii) of this section. Under paragraph (d)(3)(i) of this section, the adjustment to long-term capital gain is placed in a subgrouping separate from the adjustment to ordinary income because the reduction of long-term capital gain is required to be taken into account separately pursuant to section 702(a). The \$125 decrease in long-term capital gain is a net negative adjustment in the long-term capital subgrouping and as a result is an adjustment that does not result in an imputed underpayment under paragraph (f) of this section. The \$125 increase in ordinary income results in a net positive adjustment under paragraph (e)(4)(i) of this section. Because the ordinary subgrouping is the only subgrouping resulting in a net positive adjustment, \$125 is the total netted partnership adjustment under paragraph (b)(2) of this section. Under paragraph (b)(1)(iv) of this section, \$125 is multiplied by 40 percent resulting in an imputed underpayment of \$50.

*Example 5.* Partnership reported a \$100 deduction for certain expenses on its 2019 partnership return and an additional \$100 deduction with respect to the same type of expenses on its 2020 partnership return. The IRS initiates an administrative proceeding with respect to Partnership's 2019 and 2020 taxable years and determines that Partnership improperly accelerated accrual of a portion of the expenses with respect to the deduction in 2019 that should have been taken into account in 2020. Therefore, for taxable year 2019, the IRS determines that Partnership should have reported a deduction of \$75 with respect to the expenses (\$25 adjustment in the 2019 residual grouping). For 2020, the IRS determines that Partnership should have reported a deduction of \$125 with respect to these expenses (<\$25> adjustment in the 2020 residual grouping). There are no other adjustments for the 2019 and 2020 partnership taxable years. Pursuant to paragraph (e)(2) of this section, the adjustments for 2019 and 2020 are not netted with each other. The 2019 adjustment of \$25 is the only adjustment for that year and a net positive adjustment under paragraph (e)(4)(i) of this section, and therefore the total netted partnership adjustment for 2019 is \$25 pursuant to paragraph (b)(2) of this section. The \$25 total netted partnership adjustment is multiplied by 40 percent resulting in an imputed underpayment of \$10 for

Partnership's 2019 taxable year. The \$25 increase in the deduction for 2020 a net negative adjustment under paragraph (e)(4)(ii) of this section is an adjustment that does not result in an imputed underpayment for that year. Therefore, there is no imputed underpayment for 2020.

**Example 6.** On its partnership return for the 2020 taxable year, Partnership reported ordinary income of \$100 and a capital gain of \$50. Partnership had four equal partners during the 2020 tax year, all of whom were individuals. On its partnership return for the 2020 tax year, the capital gain was allocated to partner E and the ordinary income was allocated to all partners based on their interests in Partnership. In an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that for 2020 the capital gain allocated to E should have been \$75 instead of \$50 and that Partnership should have recognized an additional \$10 in ordinary income. In the NOPPA mailed by the IRS, the IRS may determine pursuant to paragraph (g) of this section that there is a general imputed underpayment with respect to the increase in ordinary income and a specific imputed underpayment with respect to the increase in capital gain specially allocated to E.

**Example 7.** On its partnership return for the 2020 taxable year, Partnership reported a recourse liability of \$100. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS determines that the \$100 recourse liability should have been reported as a \$100 nonrecourse liability. Under paragraph (d)(2)(iii)(B), the adjustment to the character of the liability results in a \$100 increase in income because such recharacterization of a liability could result in up to \$100 in taxable income if taken into account by any person. The \$100 increase in income is a positive adjustment in the residual grouping under paragraph (c)(5)(ii) of this section. There are no other adjustments for the 2020 partnership taxable year. The \$100 positive adjustment is treated as a net positive adjustment under paragraph (e)(4)(i) of this section, and the total netted partnership adjustment under paragraph (b)(2) of this section is \$100. Pursuant to paragraph (b)(1) of this section, the total netted partnership adjustment is multiplied by 40 percent for an imputed underpayment of \$40.

**Example 8.** Partnership reports on its 2019 partnership return \$400 of CFTEs in the general category under section 904(d). The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that the amount of CFTEs was \$300 instead of \$400 (<\$100> adjustment to CFTEs). No other adjustments are made for the 2019 taxable year. The <\$100> adjustment to CFTEs is placed in the creditable expenditure grouping described in paragraph (c)(4) of this section. Pursuant to paragraph (e)(3)(iii) of this section, the decrease to CFTEs in the creditable expenditure grouping is treated as a positive adjustment to (decrease in) credits in the credit grouping under paragraph (c)(3) of this section. Because no other adjustments have been made, the \$100 decrease in credits produces an imputed underpayment of \$100 under paragraph (b)(1) of this section.

**Example 9.** Partnership reports on its 2019 partnership return \$400 of CFTEs in the passive category under section 904(d). The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that the CFTEs reported by Partnership were general category instead of passive category CFTEs. No other adjustments are made. Under the rules in paragraph (c)(6) of this section, an adjustment to the category of a CFTE is treated as two separate adjustments: An increase to general category CFTEs of \$400 and a decrease to passive category CFTEs of \$400. Both adjustments are included in the creditable expenditure grouping under paragraph (c)(4) of this section, but they are included in separate subgroupings.

Therefore, the two amounts do not net. Instead, the \$400 increase to CFTEs in the general category subgrouping is treated as a net negative adjustment under paragraph (e)(3)(iii)(A) of this section and is an adjustment that does not result in an imputed underpayment under paragraph (f) of this section. The decrease to CFTEs in the passive category subgrouping of the creditable expenditure grouping results in a decrease in CFTEs. Therefore, pursuant to paragraph (e)(3)(iii)(A) of this section, it is treated as a decrease in credits in the credit grouping under paragraph (c)(3) of this section, which results in an imputed underpayment of \$400 under paragraph (b)(1) of this section.

**Example 10.** Partnership has two partners, A and B. Under the partnership agreement, \$100 of the CFTE is specially allocated to A for the 2019 taxable year. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year and determines that \$100 of CFTE should be reallocated from A to B. Because the adjustment reallocates a creditable expenditure, paragraph (c)(4) of this section provides that it is included in the creditable expenditure grouping rather than the reallocation grouping. The partnership adjustment is a <\$100> adjustment to general category CFTE allocable to A and an increase of \$100 to general category CFTE allocable to B. Pursuant to paragraph (d)(3)(iii) of this section, the <\$100> adjustment to general category CFTE and the increase of \$100 to general category CFTE are included in separate subgroupings in the creditable expenditure grouping. The \$100 increase in general category CFTEs, B-allocation subgrouping, is a net negative adjustment, which does not result in an imputed underpayment and is therefore taken into account by the partnership in the adjustment year in accordance with § 301.6225-3. The net decrease to CFTEs in the general-category, A-allocation subgrouping, is treated as a decrease to credits in the credit grouping under paragraph (c)(3) of this section, resulting in an imputed underpayment of \$100 under paragraph (b)(1) of this section.

**Example 11.** Partnership has two partners, A and B. Partnership owns two entities, DE1 and DE2, that are disregarded as separate from their owner for Federal tax purposes and are operating in and paying taxes to foreign jurisdictions. The partnership agreement provides that all items from DE1 and DE2 are allocable to A and B in the

following manner. Items related to DE1: To A 75% and to B 25%. Items related to DE2: To A 25% and to B 75%. On Partnership's 2018 return, Partnership reports CFTEs in the general category of \$300, \$100 with respect to DE1 and \$200 with respect to DE2. Partnership allocates the \$300 of CFTEs \$125 and \$175 to A and B respectively. During an administrative proceeding with respect to Partnership's 2018 taxable year, the IRS determines that Partnership understated the amount of creditable foreign tax paid by DE2 by \$40 and overstated the amount of creditable foreign tax paid by DE1 by \$80. No other adjustments are made. Because the two adjustments each relate to CFTEs that are subject to different allocations, the two adjustments are in different subgroupings under paragraph (d)(3)(iii)(B) of this section. The adjustment reducing the CFTEs related to DE1 results in a decrease in CFTEs within that subgrouping and under paragraph (e)(3)(iii)(A) of this section is treated as a decrease in credits in the credit grouping under paragraph (c)(3) of this section and results in an imputed underpayment of \$80 under paragraph (b)(1) of this section. The increase of \$40 of general category CFTE related to the DE2 subgrouping results in an increase in CFTEs within that subgrouping and is treated as a net negative adjustment, which does not result in an imputed underpayment and is taken into account in the adjustment year in accordance with § 301.6225-3.

(i) *Applicability date*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100-22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22T is in effect.

■ **Par. 9.** Section 301.6225-2 is added to read as follows:

**§ 301.6225-2 Modification of Imputed Underpayment.**

(a) *Partnership may request modification of an imputed underpayment.* A partnership that has received a notice of proposed partnership adjustment (NOPPA) under section 6231(a)(2) from the Internal Revenue Service (IRS) may request modification of a proposed imputed underpayment set forth in the NOPPA in accordance with this section and any forms, instructions, and other guidance prescribed by the IRS. The effect of modification on a proposed imputed underpayment is described in paragraph (b) of this section. Unless otherwise described in paragraph (d) of this section, a partnership may request any type of modification of an imputed underpayment described in paragraph (d) of this section in the time and manner described in paragraph (c) of

this section. A partnership may request modification with respect to a partnership adjustment (as defined in § 301.6241-1(a)(6)) that does not result in an imputed underpayment (as described in § 301.6225-1(f)(1)(ii)) as described in paragraph (e) of this section. Only the partnership representative may request modification under this section. See section 6223 and § 301.6223-2 for rules regarding the binding authority of the partnership representative. For purposes of this section, the term relevant partner means any person for whom modification is requested by the partnership that is—

(1) A reviewed year partner (as defined in § 301.6241-1(a)(9)), including any pass-through partner (as defined in § 301.6241-1(a)(5)), except for any reviewed year partner that is a wholly-owned entity disregarded as separate from its owner for Federal tax purposes, or

(2) An indirect partner (as defined in § 301.6241-1(a)(4)) except for any indirect partner that is a wholly-owned entity disregarded as separate from its owner for Federal tax purposes.

(b) *Effect of modification*—(1) *In general*. A modification of an imputed underpayment under this section that is approved by the IRS may result in an increase or decrease in the amount of an imputed underpayment set forth in the NOPPA. A modification under this section has no effect on the amount of any partnership adjustment determined under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63). See paragraph (e) of this section for the effect of modification on adjustments that do not result in an imputed underpayment. A modification may increase or decrease an imputed underpayment by affecting the extent to which adjustments factor into the determination of the imputed underpayment (as described in paragraph (b)(2) of this section), the tax rate that is applied in calculating the imputed underpayment (as described in paragraph (b)(3) of this section), and the number and composition of imputed underpayments, including the placement of adjustments in groupings and subgroupings (if applicable) (as described in paragraph (b)(4) of this section), as well as to the extent of other modifications allowed under rules provided in forms, instructions, or other guidance prescribed by the IRS (as described in paragraph (b)(5) of this section). If a partnership requests more than one modification under this section, modifications are taken into account in the following order:

(i) Modifications that affect the extent to which an adjustment factors into the

determination of the imputed underpayment under paragraph (b)(2) of this section;

(ii) Modification of the number and composition of imputed underpayments under paragraph (b)(4) of this section;

(iii) Modifications that affect the tax rate under paragraph (b)(3) of this section.

(2) *Modifications that affect partnership adjustments for purposes of determining the imputed underpayment*. If the IRS approves modification with respect to a partnership adjustment, such partnership adjustment is excluded from the determination of the imputed underpayment as determined under § 301.6225-1(b). This paragraph (b)(2) applies to modifications under—

(i) Paragraph (d)(2) of this section (amended returns and the alternative procedure to filing amended returns);

(ii) Paragraph (d)(3) of this section (tax exempt status);

(iii) Paragraph (d)(5) of this section (specified passive activity losses);

(iv) Paragraph (d)(7) of this section (qualified investment entities);

(v) Paragraph (d)(8) of this section (closing agreements), if applicable;

(vi) Paragraph (d)(9) of this section (tax treaty modifications), if applicable; and

(vii) Paragraph (d)(10) of this section (other modifications), if applicable.

(3) *Modifications that affect the tax rate*—(i) *In general*. If the IRS approves a modification with respect to the tax rate applied to a partnership adjustment, such modification results in a reduction in tax rate applied to the total netted partnership adjustment with respect to the partnership adjustments in accordance with this paragraph (b)(3). A modification of the tax rate does not affect how the partnership adjustment factors into the calculation of the total netted partnership adjustment. This paragraph (b)(3) applies to modifications under—

(A) Paragraph (d)(4) of this section (rate modification);

(B) Paragraph (d)(8) of this section (closing agreements), if applicable;

(C) Paragraph (d)(9) of this section (tax treaty modifications), if applicable; and

(D) Paragraph (d)(10) of this section (other modifications), if applicable.

(ii) *Determination of the imputed underpayment in the case of rate modification*. Except as described in paragraph (b)(3)(iv) of this section, in the case of an approved modification described under paragraph (b)(3)(i) of this section, the imputed underpayment is the sum of the total netted partnership adjustment consisting of the

net positive adjustments not subject to rate reduction under paragraph (b)(3)(i) of this section (taking into account any approved modifications under paragraph (b)(2) of the section), plus the *rate-modified netted partnership adjustment* determined under paragraph (b)(3)(iii) of this section, reduced or increased by any adjustments to credits (taking into account any modifications under paragraph (b)(4) of this section). The total netted partnership adjustment not subject to rate reduction under paragraph (b)(3)(i) of this section (taking into account any approved modifications under paragraph (b)(2) of the section) is determined by multiplying the partnership adjustments included in the total netted partnership adjustment that are not subject to rate modification under paragraph (b)(3)(i) of this section (including any partnership adjustment that remains after applying paragraph (b)(3)(iii) of this section) by the highest tax rate (as described in § 301.6225-1(b)(1)(iv)).

(iii) *Calculation of rate-modified netted partnership adjustment in the case of a rate modification*. The *rate-modified netted partnership adjustment* is determined as follows—

(A) Determine each relevant partner's distributive share of the partnership adjustments subject to an approved modification under paragraph (b)(3)(i) of this section based on how each adjustment subject to rate modification would be properly allocated under section 702 to such relevant partner in the reviewed year (as defined in § 301.6241-1(a)(8)).

(B) Multiply each partnership adjustment determined under paragraph (b)(3)(iii)(A) of this section by the tax rate applicable to such adjustment based on the approved modification described under paragraph (b)(3)(i) of this section.

(C) Add all of the amounts calculated under paragraph (b)(3)(iii)(B) of this section with respect to each partnership adjustment subject to an approved modification described under paragraph (b)(3)(i) of this section.

(iv) *Rate modification in the case of special allocations*. If an imputed underpayment results from adjustments to more than one partnership-related item and any relevant partner for whom modification described under paragraph (b)(3)(i) of this section is approved has a distributive share of such items that is not the same with respect to all such items, the imputed underpayment as modified based on the modification types described under paragraph (b)(3)(i) of this section is determined as described in paragraphs (b)(3)(ii) and (iii) of this section except that each relevant partner's distributive share is

determined based on the amount of net gain or loss to the partner that would have resulted if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year appropriately adjusted to reflect any approved modification under paragraphs (d)(2) and (3) and (d)(5) through (10) of this section with respect to any relevant partner. Upon request by the IRS, the partnership may be required to provide the relevant partners' capital account calculation through the end of the reviewed year, a calculation of asset liquidation gain or loss, and any other information necessary to determine whether rate modification is appropriate, consistent with the rules of paragraph (c)(2) of this section.

(4) *Modification of the number and composition of imputed underpayments.* Once approved by the IRS, a modification under paragraph (d)(6) of this section affects the manner in which adjustments are placed into groupings and subgroupings (as described in § 301.6225-1(c) and (d)) or whether the IRS designates one or more specific imputed underpayments (as described in § 301.6225-1(g)). If the IRS approves a request for modification under this paragraph (b)(4), the imputed underpayment and any specific imputed underpayment affected by or resulting from the modification is determined according to the rules of § 301.6225-1 subject to any other modifications approved by the IRS under this section.

(5) *Other modifications.* The effect of other modifications described in paragraph (d)(10) of this section, including the order that such modification will be taken into account for purposes of paragraph (b)(1) of this section, may be set forth in forms, instructions, or other guidance prescribed by the IRS.

(c) *Time, form, and manner for requesting modification—(1) In general.* In addition to the requirements described in paragraph (d) of this section, a request for modification under this section must be submitted in accordance with, and include the information required by, the forms, instructions, and other guidance prescribed by the IRS. The partnership representative must submit any request for modification and all relevant information (including information required under paragraphs (c)(2) and paragraph (d) of this section) to the IRS within the time described in paragraph (c)(3) of this section. The IRS will notify the partnership representative in writing of the approval or denial, in whole or in part, of any request for modification. A request for modification, including a request by the IRS for information

related to a request for modification, and the determination by the IRS to approve or not approve all or a portion of a request for modification, is part of the administrative proceeding with respect to the partnership under subchapter C of chapter 63 and does not constitute an examination, inspection, or other administrative proceeding with respect to any other person for purposes of section 7605(b).

(2) *Partnership must substantiate facts supporting a request for modification—(i) In general.* A partnership requesting modification under this section must substantiate the facts supporting such a request to the satisfaction of the IRS. The documents and other information necessary to substantiate a particular request for modification are based on the facts and circumstances of each request, as well as the type of modification requested under paragraph (d) of this section, and may include tax returns, partnership operating documents, certifications in the form and manner required with respect to the particular modification, and any other information necessary to support the requested modification. The IRS may, in forms, instructions, or other guidance, set forth procedures with respect to information and documents supporting the modification, including procedures to require particular documents or other information to substantiate a particular type of modification, the manner for submitting documents and other information to the IRS, and recordkeeping requirements. The IRS will deny a request for modification if a partnership fails to provide information the IRS determines is necessary to substantiate a request for modification within the time restrictions described in paragraph (c) of this section.

(ii) *Information to be furnished for any modification request.* In the case of any modification request, the partnership representative must furnish to the IRS a detailed description of the partnership's structure, allocations, ownership, and ownership changes, its relevant partners for each taxable year relevant to the request for modification, as well as the partnership agreement as defined in § 1.704-1(b)(2)(ii)(h) of this chapter for each taxable year relevant to the modification request. In the case of any modification request with respect to a relevant partner that is an indirect partner, the partnership representative must provide to the IRS any information that the IRS may require relevant to any pass-through partner through which the relevant partner holds its interest in the partnership. For instance, if the partnership requests modification with

respect to an amended return filed by a relevant partner pursuant to paragraph (d)(2) of this section, the partnership representative may be required to provide to the IRS information that would have been required to have been filed by pass-through partners through which the relevant partner holds its interest in the partnership as if those pass-through partners had also filed their own amended returns.

(3) *Time for submitting modification request and information—(i) Modification request.* Unless the IRS grants an extension of time, all information required under this section with respect to a request for modification must be submitted to the IRS in the form and manner prescribed by the IRS on or before 270 days after the date the NOPPA is mailed.

(ii) *Extension of the 270-day period.* The IRS may, in its discretion, grant a request for extension of the 270-day period described in paragraph (c)(3)(i) of this section provided the partnership submits such request to the IRS, in the form and manner prescribed by forms, instructions, or other guidance, before expiration of such period, as extended by any prior extension granted under this paragraph (c)(3)(ii).

(iii) *Expiration of the 270-day period by agreement.* The 270-day period described in paragraph (c)(3)(i) of this section (including any extensions under paragraph (c)(3)(ii) of this section) expires as of the date the partnership and the IRS agree, in writing, to waive the 270-day period after the mailing of the NOPPA and before the IRS may issue a notice of final partnership adjustment. See section 6231(b)(2)(A); § 301.6231-1(b)(2).

(4) *Approval of modification by the IRS.* Notification of approval will be provided to the partnership only after receipt of all relevant information (including any supplemental information required by the IRS) and all necessary payments with respect to the particular modification requested before expiration of the 270-day period in paragraph (c)(3)(i) of this section plus any extension granted by the IRS under paragraph (c)(3)(ii) of this section.

(d) *Types of modification—(1) In general.* Except as otherwise described in this section, a partnership may request one type of modification or more than one type of modification described in paragraph (d) of this section.

(2) *Amended returns by partners—(i) In general.* A partnership may request a modification of an imputed underpayment based on an amended return filed by a relevant partner provided all of the partnership



adjustments properly allocable to such relevant partner are taken into account and any amount due is paid in accordance with this paragraph (d)(2) of this section. Only adjustments to partnership-related items or adjustments to a relevant partner's tax attributes affected by adjustments to partnership-related items may be taken into account on an amended return under paragraph (d)(2) of this section. A partnership may request a modification for purposes of this paragraph (d)(2) by submitting a modification request based on the alternative procedure to filing amended returns as described in paragraph (d)(2)(x) of this section. The partnership may not request an additional modification of any imputed underpayment for a partnership taxable year under this section with respect to any relevant partner that files an amended return (or utilizes the alternative procedure to filing amended returns) under paragraph (d)(2) of this section or with respect to any partnership adjustment allocated to such relevant partner.

(ii) *Requirements for approval of a modification request based on amended return.* Except as otherwise provided under alternative procedures described in paragraph (d)(2)(x) of this section, an amended return modification request under this paragraph (d)(2) will not be approved unless the provisions of this paragraph (d)(2)(ii) are satisfied.

(A) *Full payment required.* An amended return modification request under paragraph (d)(2) of this section will not be approved unless the relevant partner filing the amended return has paid all tax, penalties, additions to tax, additional amounts, and interest due as a result of taking into account the adjustments in the first affected year (as defined in § 301.6226-3(b)(2)) and all modification years (as described in paragraph (d)(2)(ii)(B) of this section) at the time such return is filed with the IRS.

(B) *Amended returns for all relevant taxable years must be filed.* Modification under paragraph (d)(2) of this section will not be approved by the IRS unless a relevant partner files an amended return for the first affected year and any modification year. A *modification year* is any taxable year with respect to which any tax attribute (as defined in § 301.6241-1(a)(10)) of the relevant partner is affected by reason of taking into account the relevant partner's distributive share of all partnership adjustments in the first affected year. A modification year may be a taxable year before or after the first affected year, depending on the effect on the relevant partner's tax attributes of

taking into account the relevant partner's distributive share of the partnership adjustments in the first affected year.

(C) *Amended returns for partnership adjustments that reallocate distributive shares.* Except as described in this paragraph (d)(2)(ii)(C), in the case of a partnership adjustment that reallocates the distributive share of any partnership-related item from one partner to another, a modification under paragraph (d)(2) of this section will be approved only if all partners affected by such adjustment file amended returns in accordance with paragraph (d)(2) of this section and all such returns are approved by the IRS for modification purposes. The IRS may determine that the requirements of this paragraph (d)(2)(ii)(C) are satisfied even if not all relevant partners affected by such adjustment file amended returns provided the remaining relevant partners affected by the reallocation take into account their distributive share of the adjustment through other modifications approved by the IRS (including the alternative procedures to filing amended returns under paragraph (d)(2)(x) of this section) or if a pass-through partner takes into account the relevant adjustments in accordance with paragraph (d)(2)(vi) of this section. For instance, in the case of an adjustment that reallocates a loss from one partner to another, the IRS may determine that the requirements of this paragraph (d)(2)(ii)(C) have been satisfied if one affected relevant partner files an amended return taking into account the adjustment and the other affected relevant partner signs a closing agreement with the IRS taking into account the adjustments.

(iii) *Form and manner for filing amended returns.* A relevant partner must file all amended returns required for modification under paragraph (d)(2) of this section with the IRS in accordance with forms, instructions, and other guidance prescribed by the IRS. Except as otherwise provided under alternative procedures described in paragraph (d)(2)(x) of this section, the IRS will not approve modification under paragraph (d)(2) of this section unless prior to the expiration of the 270-day period described in paragraph (c)(3) of this section, the partnership representative provides to the IRS, in the form and manner prescribed by the IRS, an affidavit from each relevant partner signed under penalties of perjury by such partner stating that all of the amended returns required to be filed under paragraph (d)(2) of this section has been filed (including the date on which such amended returns

were filed) and that the full amount of tax, penalties, additions to tax, additional amounts, and interest was paid (including the date on which such amounts were paid).

(iv) *Period of limitations.* Generally, the period of limitations under sections 6501 and 6511 do not apply to an amended return filed under this paragraph (d)(2) provided the amended return otherwise meets the requirements of paragraph (d)(2) of this section.

(v) *Amended returns in the case of adjustments allocated through certain pass-through partners.* A request for modification related to an amended return of a relevant partner that is an indirect partner holding its interest in the partnership through a pass-through partner that could be subject to tax under chapter 1 on the partnership adjustments that are properly allocated to such pass-through partner will not be approved unless the partnership—

(A) Establishes that the pass-through partner is not subject to chapter 1 tax on the adjustments that are properly allocated to such pass-through partner; or

(B) Requests modification with respect to the adjustments resulting in chapter 1 tax for the pass-through partner, including full payment of such chapter 1 tax for the first affected year and all modification years under paragraph (d)(2) of this section or in accordance with forms, instructions, or other guidance prescribed by the IRS.

(vi) *Amended returns in the case of pass-through partners—(A) Pass-through partners may file amended returns.* A relevant partner that is a pass-through partner, including a partnership-partner (as defined in § 301.6241-1(a)(7)) that has a valid election under section 6221(b) in effect for a partnership taxable year, may, in accordance with forms, instructions, and other guidance provided by the IRS and solely for purposes of modification under paragraph (d)(2) of this section, take into account its share of the partnership adjustments and determine and pay an amount calculated in the same manner as the amount computed under § 301.6226-3(e)(4)(iii) subject to paragraph (d)(2)(vi)(B) of this section.

(B) *Modifications with respect to upper-tier partners of the pass-through partner.* In accordance with forms, instructions, and other guidance provided by the IRS, for purposes of determining and calculating the amount a pass-through partner must pay under paragraph (d)(2)(vi)(A) of this section, the pass-through partner may take into account modifications with respect to its direct and indirect partners to the extent that such modifications are



requested by the partnership requesting modification and approved by the IRS under this section.

(vii) *Limitations on amended returns*—(A) *In general.* A relevant partner may not file an amended return with respect to partnership adjustments or with respect to an imputed underpayment except as described in paragraph (d)(2) of this section.

(B) *Further amended returns restricted.* If a relevant partner files an amended return under paragraph (d)(2) of this section, such partner may not file a subsequent amended return without the permission of the IRS.

(viii) *Penalties.* The applicability of any penalties, additions to tax, or additional amounts that relate to an adjustment to a partnership-related item is determined at the partnership level in accordance with section 6221(a).

However, the amount of penalties, additions to tax, and additional amounts a relevant partner must pay under paragraph (d)(2)(ii)(A) of this section for the first affected year and for any modification year is based on the underpayment or understatement of tax, if any, reflected on the amended return filed by the relevant partner under this paragraph (d)(2). For instance, if after taking into account the adjustments, the return of the relevant partner for the first affected year or any modification year reflects an underpayment or an understatement that falls below the applicable threshold for the imposition of a penalty under section 6662(d), no penalty would be due from that relevant partner for such year. A relevant partner may raise a partner-level defense (as described in § 301.6226-3(d)(3)) by first paying the penalty, addition to tax, or additional amount with the amended return filed under this paragraph (d)(2) and then filing a claim for refund in accordance with forms, instructions, and other guidance.

(ix) *Effect on tax attributes binding.* Any adjustments to the tax attributes of any relevant partner which are affected by modification under paragraph (d)(2) of this section are binding on the relevant partner with respect to the first affected year and all modification years (as defined in paragraph (d)(2)(ii)(B) of this section). A failure to adjust any tax attribute in accordance with this paragraph (d)(2)(ix) is a failure to treat a partnership-related item in a manner which is consistent with the treatment of such item on the partnership return within the meaning of section 6222. The provisions of section 6222(c) and § 301.6222-1(c) (regarding notification of inconsistent treatment) do not apply with respect to tax attributes under this paragraph (d)(2)(ix).

(x) *Alternative procedure to filing amended returns*—(A) *In general.* A partnership may satisfy the requirements of paragraph (d)(2) of this section by submitting on behalf of a relevant partner, in accordance with forms, instructions, and other guidance provided by the IRS, all information and payment of any tax, penalties, additions to tax, additional amounts, and interest that would be required to be provided if the relevant partner were filing an amended return under paragraph (d)(2) of this section, except as otherwise provided in relevant forms, instructions, and other guidance provided by the IRS. A relevant partner for which the partnership seeks modification under this paragraph (d)(2)(x) must agree to take into account, in accordance with forms, instructions, and other guidance provided by the IRS, adjustments to any tax attributes of such relevant partner. A modification request submitted in accordance with the alternative procedure under this paragraph (d)(2)(x) is not a claim for refund with respect to any person.

(B) *Modifications with respect to reallocation adjustments.* A submission made in accordance with this paragraph (d)(2)(x) with respect to any relevant partner is treated as if such relevant partner filed an amended return for purposes of paragraph (d)(2)(ii)(C) of this section (regarding the requirement that all relevant partners affected by a reallocation must file an amended return to be eligible to for the modification under paragraph (d)(2) of this section) provided the submission is with respect to the first affected year and all modification years of such relevant partner as required under paragraph (d)(2) of this section.

(3) *Tax-exempt partners*—(i) *In general.* A partnership may request modification of an imputed underpayment with respect to partnership adjustments that the partnership demonstrates to the satisfaction of the IRS are allocable to a relevant partner that would not owe tax by reason of its status as a tax-exempt entity (as defined in paragraph (d)(3)(ii) of this section) in the reviewed year (tax-exempt partner).

(ii) *Definition of tax-exempt entity.* For purposes of paragraph (d)(3) of this section, the term *tax-exempt entity* means a person or entity defined in section 168(h)(2)(A), (C), or (D).

(iii) *Modification limited to portion of partnership adjustments for which tax-exempt partner not subject to tax.* Only the portion of the partnership adjustments properly allocated to a tax-exempt partner with respect to which the partner would not be subject to tax

for the reviewed year (tax-exempt portion) may form the basis of a modification of the imputed underpayment under paragraph (d)(3) of this section. A modification under paragraph (d)(3) of this section will not be approved by the IRS unless the partnership provides documentation in accordance with paragraph (c)(2) of this section to support the tax-exempt partner's status and the tax-exempt portion of the partnership adjustment allocable to the tax-exempt partner.

(4) *Modification based on a rate of tax lower than the highest applicable tax rate.* A partnership may request modification based on a lower rate of tax for the reviewed year with respect to adjustments that are attributable to a relevant partner that is a C corporation and adjustments with respect to capital gains or qualified dividends that are attributable to a relevant partner who is an individual. In no event may the lower rate determined under the preceding sentence be less than the highest rate in effect for the reviewed year with respect to the type of income and taxpayer. For instance, with respect to adjustments that are attributable to a C corporation, the highest rate in effect for the reviewed year with respect to all C corporations would apply to that adjustment, regardless of the rate that would apply to the C corporation based on the amount of that C corporation's taxable income. For purposes of this paragraph (d)(4), an S corporation is treated as an individual.

(5) *Certain passive losses of publicly traded partnerships*—(i) *In general.* In the case of a publicly traded partnership (as defined in section 469(k)(2)) that is a relevant partner, the imputed underpayment is determined without regard to the adjustment that the partnership demonstrates would be reduced by a specified passive activity loss (as defined in paragraph (d)(5)(ii) of this section) which is allocable to a specified partner (as defined in paragraph (d)(5)(iii) of this section) or qualified relevant partner (as defined in paragraph (d)(5)(iv) of this section).

(ii) *Specified passive activity loss.* A specified passive activity loss carryover amount for any specified partner or qualified relevant partner of a publicly traded partnership is the lesser of the section 469(k) passive activity loss of that partner which is separately determined with respect to such partnership—

(A) At the end of the first affected year (affected year loss); or

(B) At the end of either—

(1) The specified partner's taxable year in which or with which the adjustment year (as defined in

§ 301.6241–1(a)(1)) of the partnership ends, reduced to the extent any such partner has utilized any portion of its affected year loss to offset income or gain relating to the ownership or disposition of its interest in such publicly traded partnership during either the adjustment year or any other year; or

(2) The most recent year for which the publicly traded partnership has filed a return under section 6031.

(iii) *Specified partner.* A specified partner is a person that for each taxable year beginning with the first affected year through the person's taxable year in which or with which the partnership adjustment year ends satisfies the following three requirements—

(A) The person is a partner of a publicly traded partnership;

(B) The person is an individual, estate, trust, closely held C corporation, or personal service corporation; and

(C) The person has a specified passive activity loss with respect to the publicly traded partnership.

(iv) *Qualified relevant partner.* A qualified relevant partner is a relevant partner that meets the three requirements to be a specified partner (as described in paragraphs (d)(5)(iii)(A), (B), and (C) of this section) for each year beginning with the first affected year through described in paragraph (d)(5)(ii)(B)(2) of this section.

(v) *Partner notification requirement to reduce passive losses.* If the IRS approves a modification request under paragraph (d)(5) of this section, the partnership must report, in accordance with forms, instructions, or other guidance prescribed by the IRS, to each specified partner the amount of that specified partner's reduction of its suspended passive loss carryovers at the end of the adjustment year to take into account the amount of any passive losses applied in connection with such modification request. In the case of a qualified relevant partner, the partnership must report, in accordance with forms, instructions, or other guidance prescribed by the IRS, to each qualified relevant partner the amount of that qualified relevant partner's reduction of its suspended passive loss carryovers at the end of the taxable year for which the partnership's next return is due to be filed under section 6031 to be taken into account by the qualified relevant partner on the partner's return for the year that includes the end of the partnership's taxable year for which the partnership's next return is due to be filed under section 6031. The reduction in suspended passive loss carryovers as reported to a specified partner under this paragraph (d)(5)(v) is a

determination of the partnership under subchapter C of chapter 63 and is binding on the specified partners under section 6223 and the regulations thereunder.

(6) *Modification of the number and composition of imputed underpayments—(i) In general.* A partnership may request modification of the number or composition of any imputed underpayment included in the NOPPA by requesting that the IRS include one or more partnership adjustments in a particular grouping or subgrouping (as described in § 301.6225–1(c) and (d)) or specific imputed underpayments (as described in § 301.6225–1(g)) different from the grouping, subgrouping, or imputed underpayment set forth in the NOPPA. For example, a partnership may request under this paragraph (d)(6) that one or more partnership adjustments taken into account to determine a general imputed underpayment set forth in the NOPPA be taken into account to determine a specific imputed underpayment.

(ii) *Request for particular treatment regarding limitations or restrictions.* A modification request under paragraph (d)(6) of this section includes a request that one or more partnership adjustments be treated as if no limitations or restrictions under § 301.6225–1(d) apply and as a result such adjustments may be subgrouped with other adjustments.

(7) *Partnerships with partners that are “qualified investment entities” described in section 860—(i) In general.* A partnership may request a modification of an imputed underpayment based on the partnership adjustments allocated to a relevant partner where the modification is based on deficiency dividends distributed as described in section 860(f) by a relevant partner that is a qualified investment entity (QIE) under section 860(b) (which includes both a regulated investment company (RIC) and a real estate investment trust (REIT)). Modification under this paragraph (d)(7) is available only to the extent that the deficiency dividends take into account adjustments described in § 301.6225–1 that are also adjustments within the meaning of section 860(d)(1) or (d)(2) (whichever applies).

(ii) *Documentation of deficiency dividend.* The partnership must provide documentation in accordance with paragraph (c) of this section of the “determination” described in section 860(e). Under section 860(e)(2), § 1.860–2(b)(1)(i) of this chapter, and paragraph (d)(8) of this section, a closing agreement entered into by the QIE partner pursuant to section 7121 and

paragraph (d)(8) of this section is a determination described in section 860(e), and the date of the determination is the date in which the closing agreement is approved by the IRS. In addition, under section 860(e)(4), a determination also includes a Form 8927, *Determination Under Section 860(e)(4) by a Qualified Investment Entity*, properly completed and filed by the RIC or REIT pursuant to section 860(e)(4). To establish the date of the determination under section 860(e)(4) and the amount of deficiency dividends actually paid, the partnership must provide a copy of Form 976, *Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust* (Form 976), properly completed by or on behalf of the QIE pursuant to section 860(g), together with a copy of each of the required attachments for Form 976.

(8) *Closing agreements.* A partnership may request modification based on a closing agreement entered into by the IRS and the partnership or any relevant partner, or both if appropriate, pursuant to section 7121. If modification under this paragraph (d)(8) is approved by the IRS, any partnership adjustment that is taken into account under such closing agreement and for which any required payment under the closing agreement is made will not be taken into account in determining the imputed underpayment under § 301.6225–1. Generally, the IRS will not approve any additional modification under this section with respect to a relevant partner to which a modification under this paragraph (d)(8) has been approved.

(9) *Tax treaty modifications.* A partnership may request a modification under this paragraph (d)(9) with respect to a relevant partner's distributive share of an adjustment to a partnership-related item if the relevant partner—

(i) Was a foreign person who would have qualified, under an income tax treaty with the United States, for a reduction or exemption from tax with respect to such partnership-related item in the reviewed year;

(ii) Would have derived the item (within the meaning of § 1.894–1(d) of this chapter) had it been taken into account properly in the partnership's reviewed year return; and

(iii) Is not otherwise prevented under the income tax treaty with the United States from claiming such reduction or exemption with respect to the reviewed year at the time the modification under this paragraph (d)(9) is requested.

(10) *Other modifications.* A partnership may request a modification not otherwise described in paragraph (d)

of this section, and the IRS will determine whether such modification is accurate and appropriate in accordance with paragraph (c)(4) of this section. Additional types of modifications and the documentation necessary to substantiate such modifications may be set forth in forms, instructions, or other guidance prescribed by the IRS.

(e) *Modification of adjustments that do not result in an imputed underpayment.* A partnership may request modification of adjustments that do not result in an imputed underpayment (as described in § 301.6225-1(f)(1)(ii)) using modifications described in paragraph (d)(2) of this section (amended returns and the alternative procedure to filing amended returns), paragraph (d)(6) of this section (number and composition of the imputed underpayment), paragraph (d)(8) of this section (closing agreements), or, if applicable, paragraph (d)(10) of this section (other modifications).

(f) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63, each partnership and its relevant partners are calendar year taxpayers, all relevant partners are U.S. persons (unless otherwise stated), the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods, and no partnership requests modification under this section except as provided in the example.

*Example 1.* Partnership has two partners during its 2019 partnership taxable year: P and S. P is a partnership, and S is an S Corporation. P has four partners during its 2019 partnership taxable year: A, C, T and DE. A is an individual, C is a C Corporation, T is a trust, and DE is a wholly-owned entity disregarded as separate from its owner for Federal tax purposes. The owner of DE is B, an individual. T has two beneficiaries during its 2019 taxable year: F and G, both individuals. S has 3 shareholders during its 2019 taxable year: H, I, and J, all individuals. For purposes of this section, if Partnership requests modification with respect to A, B, C, F, G, H, I, and J, those persons are all relevant partners (as defined in paragraph (a) of this section). P, S, and DE are not relevant partners (as defined in paragraph (a) of this section) because DE is a wholly-owned entity disregarded as separate from its owner for Federal tax purposes and modification was not requested with respect to P and S.

*Example 2.* The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. The IRS mails a NOPPA to Partnership for the 2019 partnership taxable year proposing a single partnership adjustment increasing ordinary income by \$100, resulting in a \$40 imputed underpayment (\$100 multiplied by the 40

percent tax rate). Partner A, an individual, held a 20 percent interest in Partnership during 2019. Partnership timely requests modification under paragraph (d)(2) of this section based on A's filing an amended return for the 2019 taxable year taking into account \$20 of the partnership adjustment and paying the tax and interest due attributable to A's share of the increased income and the tax rate applicable to A for the 2019 tax year. No tax attribute in any other taxable year of A is affected by A's taking into account A's share of the partnership adjustment for 2019. In accordance with paragraph (d)(2)(iii) of this section, Partnership's partnership representative provides the IRS with documentation demonstrating that A filed the 2019 return and paid all tax and interest due. The IRS approves the modification and, in accordance with paragraph (b)(2) of this section, the \$20 increase in ordinary income allocable to A is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225-1). Partnership's total netted partnership adjustment is reduced to \$80 (\$100 adjustment less \$20 taken into account by A), and the imputed underpayment is reduced to \$32 (total netted partnership adjustment of \$80 after modification multiplied by 40 percent).

*Example 3.* The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. Partnership has two equal partners during its entire 2019 taxable year: An individual, A, and a partnership-partner, B. During all of 2019, B has two equal partners: A tax-exempt entity, C, and an individual, D. The IRS mails a NOPPA to Partnership for its 2019 taxable year proposing a single partnership adjustment increasing Partnership's ordinary income by \$100, resulting in a \$40 imputed underpayment (\$100 total netted partnership adjustment multiplied by 40 percent). Partnership timely requests modification under paragraph (d)(3) of this section with respect to B's partner, C, a tax-exempt entity. In accordance with paragraph (d)(3)(iii) of this section, Partnership's partnership representative provides the IRS with documentation substantiating to the IRS's satisfaction that C held a 25 percent indirect interest in Partnership through its interest in B during the 2019 taxable year, that C was a tax-exempt entity defined in paragraph (d)(3)(ii) of this section during the 2019 taxable year, and that C was not subject to tax with respect to its entire distributive share of the partnership adjustment allocated to B (which is \$25 (50 percent  $\times$  50 percent  $\times$  \$100)). The IRS approves the modification and, in accordance with paragraph (b)(2) of this section, the \$25 increase in ordinary income allocated to C, through B, is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225-1). Partnership's total netted partnership adjustment is reduced to \$75 (\$100 adjustment less C's share of the adjustment, \$25), and the imputed underpayment is reduced to \$30 (total netted partnership adjustment of \$75, after modification, multiplied by 40 percent).

*Example 4.* The facts are the same as in *Example 3* of this paragraph (f), except \$10

of the \$25 of the adjustment allocated to C is unrelated business taxable income (UBTI) as defined in section 512 because it is debt-financed income within the meaning of section 514 (no section 512 UBTI modifications apply) with respect to which C would be subject to tax if taken into account by C. As a result, the modification under paragraph (d)(3) of this section with respect to C relates only to \$15 of the \$25 of ordinary income allocated to C that is not UBTI. Therefore, only a modification of \$15 (\$25 less \$10) of the total \$100 partnership adjustment may be approved by the IRS under paragraph (d)(3) of this section and, in accordance with paragraph (b)(2) of this section, excluded when determining the imputed underpayment for Partnership's 2019 taxable year. The total netted partnership adjustment (determined in accordance with § 301.6225-1) is reduced to \$85 (\$100 less \$15), and the imputed underpayment is reduced to \$34 (total netted partnership adjustment of \$85, after modification, multiplied by 40 percent).

*Example 5.* The facts are the same as in *Example 3* of this paragraph (f), except that Partnership also timely requests modification under paragraph (d)(2) with respect to an amended return filed by B, and, in accordance with (d)(2)(iii) of this section, Partnership's partnership representative provides the IRS with documentation demonstrating that B filed the 2019 return and paid all tax and interest due. B reports 50 percent of the partnership adjustments (\$50) on its amended return, and B calculates an amount under paragraph (d)(2)(vi)(A) of this section and § 301.6226-3(e)(4)(iii) that, pursuant to paragraph (d)(2)(vi)(B) of this section, takes into account the modification under paragraph (d)(3) approved by the IRS with respect to B's partner C, a tax-exempt entity. B makes a payment pursuant to paragraph (d)(2)(ii)(A) of this section, and the IRS approves the requested modification. Partnership's total netted partnership adjustment is reduced by \$50 (the amount taken into account by B). Partnership's total netted partnership adjustment (determined in accordance with § 301.6225-1) is \$50, and the imputed underpayment, after modification, is \$20.

*Example 6.* The facts are the same as in *Example 3* of this paragraph (f), except that in addition to the modification with respect to tax-exempt entity C, which reduced the imputed underpayment by excluding from the determination of the imputed underpayment \$25 of the \$100 partnership adjustment reflected in the NOPPA, Partnership timely requests modification under paragraph (d)(2) of this section with respect to an amended return filed by individual D, and, in accordance with (d)(2)(iii) of this section, Partnership's partnership representative provides the IRS with documentation demonstrating that D filed the 2019 return and paid all tax and interest due. D's amended return for D's 2019 taxable year takes into account D's share of the partnership adjustment (50 percent of B's 50 percent interest in Partnership, or \$25) and D paid the tax and interest due as a result of taking into account D's share of the partnership adjustment in accordance with

paragraph (d)(2) of this section. No tax attribute in any other taxable year of D is affected by D taking into account D's share of the partnership adjustment for 2019. The IRS approves the modification and the \$25 increase in ordinary income allocable to D is not included in the calculation of the total netted partnership adjustment (determined in accordance with § 301.6225-1). As a result, Partnership's total netted partnership adjustment is \$50 (\$100, less \$25 allocable to C, less \$25 taken into account by D), and the imputed underpayment, after modification, is \$20.

**Example 7.** The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. All of Partnership's partners during its 2019 taxable year are individuals. The IRS mails a NOPPA to Partnership for the 2019 taxable year proposing three partnership adjustments. The first partnership adjustment is an increase to ordinary income of \$75 for 2019. The second partnership adjustment is an increase in the depreciation deduction allowed for 2019 of \$25, which under § 301.6225-1(d)(2)(i) is treated as a \$25 decrease in income. The third adjustment is an increase in long-term capital gain of \$10 for 2019. In accordance with § 301.6225-1, the total netted partnership adjustment is \$85 (\$75 increase in ordinary income + \$10 increase in long-term capital gain), resulting in an imputed underpayment of \$34 (\$85 multiplied by 40 percent). The \$25 decrease in income as a result of the increase in depreciation is an adjustment that does not result in an imputed underpayment under § 301.6225-1(f). Under the partnership agreement in effect for Partnership's 2019 taxable year, the long-term capital gain and the increase in depreciation is specially allocated to B and the increase in ordinary income is specially allocated to A. Partnership requests a modification under paragraph (d)(6) of this section to determine a specific imputed underpayment with respect to the \$75 adjustment to ordinary income allocated to A. The specific imputed underpayment is with respect to \$75 of the increase in income specially allocated to A and the general imputed underpayment is with respect to \$10 of the increase in capital gain and the \$25 increase in depreciation deduction specially allocated to B. If the modification is approved by the IRS, the specific imputed underpayment is \$30 (\$75 multiplied by 40 percent), the general imputed underpayment is \$4 (\$10 multiplied by 40 percent), and the increase in depreciation of \$25 remains an adjustment that does not result in an imputed underpayment under § 301.6225-1(f) and is associated with the general imputed underpayment.

**Example 8.** Partnership has two reviewed year partners, C1 and C2, both of which are C corporations. The IRS mails to Partnership a NOPPA with two adjustments, both based on rental real estate activity. The first adjustment is an increase of rental real estate income of \$100 attributable to Property A. The second adjustment is an increase of rental real estate loss of \$30 attributable to Property B. The Partnership did not treat the leasing arrangement with respect to Property A and Property B as an appropriate economic

unit for purposes of section 469. If the \$100 increase in income attributable to Property A and the \$30 increase in loss attributable to Property B were included in the same subgrouping and netted, then taking the \$30 increase in loss into account would result in a decrease in the amount of the imputed underpayment. Also, the \$30 increased loss might be limited or restricted if taken into account by any person under the passive activity rules under section 469. For instance, under section 469, rental activities of the two properties could be treated as two activities, which could limit a partner's ability to claim the loss. In addition to the potential limitations under section 469, there are other potential limitations that might apply if the \$30 loss were taken into account by any person. Therefore, in accordance with § 301.6225-1(d), the two adjustments are placed in separate subgroupings within the residual grouping, the total netted partnership adjustment is \$100, the imputed underpayment is \$40 (\$100 × 40 percent), and the \$30 increase in loss is an adjustment that does not result in an imputed underpayment under § 301.6225-1(f). Partnership requests modification under paragraph (d)(6) of this section, substantiating to the satisfaction of the IRS that C1 and C2 are publicly traded C corporations, and therefore, the passive activity loss limitations under section 469 of the Code do not apply. Partnership also substantiates to the satisfaction of the IRS that no other limitation or restriction applies that would prevent the grouping of the \$100 with the \$30 loss. The IRS approves Partnership's modification request and places the \$100 of income and the \$30 loss into the subgrouping in the residual grouping under the rules described in § 301.6225-1(c)(5). Under § 301.6225-1(e), because the two adjustments are in one subgrouping, they are netted together, resulting in a total netted partnership adjustment of \$70 (\$100 plus <\$30>) and an imputed underpayment of \$28 (\$70 × 40 percent). After modification, there are not adjustments treated as an adjustment that does not result in an imputed underpayment under § 301.6225-1(f) because the \$30 loss is now netted with the \$100 of income.

**(g) Applicability date—(1) In general.** Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

**(2) Election under § 301.9100-22 in effect.** This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par. 10.** Section 301.6225-3 is added to read as follows:

**§ 301.6225-3 Treatment of partnership adjustments that do not result in an imputed underpayment.**

**(a) In general.** Partnership adjustments (as defined in § 301.6241-1(a)(6)) that do not result in an imputed underpayment (as described in

§ 301.6225-1(f)) are taken into account by a partnership in the adjustment year (as defined in § 301.6241-1(a)(1)) in accordance with paragraph (b) of this section.

**(b) Treatment of adjustments by the partnership—(1) In general.** Except as described in paragraphs (b)(2) through (5) of this section, a partnership adjustment that does not result in an imputed underpayment is taken into account as a reduction in non-separately stated income or as an increase in non-separately stated loss for the adjustment year depending on whether the adjustment is to a partnership-related item that is an item of income or loss.

**(2) Separately stated items.** In the case of a partnership adjustment to partnership-related item that is required to be separately stated under section 702, the adjustment is taken into account by the partnership in the adjustment year as a reduction in such separately stated item or as an increase in such separately stated item depending on whether the adjustment is a reduction or an increase to the separately stated item.

**(3) Credits.** In the case of an adjustment to a partnership-related item that is reported or could be reported by a partnership as a credit on the partnership's return for the reviewed year (as defined in § 301.6241-1(a)(8)), the adjustment is taken into account by the partnership in the adjustment year as a separately stated item.

**(4) Reallocation adjustments.** A partnership adjustment that reallocates a partnership-related item to or from a particular partner or partners that also does not result in an imputed underpayment pursuant to § 301.6225-1(f) is taken into account by the partnership in the adjustment year as a separately stated item or a non-separately stated item, as required by section 702. The portion of an adjustment allocated under this paragraph (b)(4) is allocated to adjustment year partners (as defined in § 301.6241-1(a)(2)) who are also reviewed year partners (as defined in § 301.6241-1(a)(9)) with respect to whom the amount was reallocated.

**(5) Adjustments taken into account by partners as part of the modification process.** If, as part of modification under § 301.6225-2, a relevant partner (as defined in § 301.6225-2(a)) takes into account a partnership adjustment that would not result in an imputed underpayment, and the IRS approves the modification, such partnership adjustment is not taken into account by the partnership in the adjustment year in accordance with § 301.6225-1(a).

(6) *Effect of election under section 6226.* If a partnership makes a valid election under § 301.6226–1 with respect to an imputed underpayment, a partnership adjustment that does not result in an imputed underpayment and that is associated with such imputed underpayment as described in § 301.6225–1(g) is taken into account by the reviewed year partners in accordance with § 301.6226–3 and is not taken into account under this section.

(c) *Treatment of adjustment year partners.* The rules under subchapter K with respect to the treatment of partners apply in the case of adjustments taken into account by the partnership under this section.

(d) *Applicability date—(1) In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 11.** Section 301.6225–4 is added to read as follows:

**§ 301.6225–4 Effect of a partnership adjustment on specified tax attributes of partnerships and their partners.**

(a) *Adjustments to specified tax attributes—(1) In general.* When there is a partnership adjustment (as defined in § 301.6241–1(a)(6)), the partnership and its adjustment year partners (as defined in § 301.6241–1(a)(2)) generally must adjust their specified tax attributes (as defined in paragraph (a)(2) of this section) in accordance with the rules in this section. For a partnership adjustment that results in an imputed underpayment (as defined in § 301.6241–1(a)(3)), specified tax attributes are generally adjusted by making appropriate adjustments to the book value and basis of partnership property under paragraph (b)(2) of this section, creating notional items based on the partnership adjustment under paragraph (b)(3) of this section, allocating those notional items as described in paragraph (b)(5) of this section, and determining the effect of those notional items for the partnership and its reviewed year partners (as defined in § 301.6241–1(a)(9)) or their successors (as defined in § 1.704–1(b)(1)(viii)(b) of this chapter) under paragraph (b)(6) of this section. Paragraph (c) of this section describes how to treat an expenditure for any payment required to be made by a partnership under subchapter C of chapter 63 of the Internal Revenue Code

(subchapter C of chapter 63) including any imputed underpayment. Paragraph (d) of this section describes adjustments to tax attributes of a partnership and its partners in the case of a partnership adjustment that does not result in an imputed underpayment (as described in § 301.6225–1(f)).

(2) *Specified tax attributes.* Specified tax attributes are the tax basis and book value of a partnership's property, amounts determined under section 704(c), adjustment year partners' bases in their partnership interests, adjustment year partners' capital accounts determined and maintained in accordance with § 1.704–1(b)(2) of this chapter, and earnings and profits under section 312.

(3) *Timing.* Adjustments to specified tax attributes under this section are made in the adjustment year (as defined in § 301.6241–1(a)(1)). Thus, to the extent that an adjustment to a specified tax attribute under this section is reflected on a federal tax return, the partnership adjustment is generally first reflected on any return filed with respect to the adjustment year.

(4) *Effect of other sections.* The determination of specified tax attributes under this section is not conclusive as to tax attributes of a partnership or its partners determined under other sections of the Internal Revenue Code (Code), including the subchapter C of chapter 63. For example, a partnership that files an administrative adjustment request (AAR) under section 6227 adjusts partnership tax attributes as appropriate. Further, to the extent a partner or partnership appropriately adjusted its tax attributes prior to a final determination under subchapter C of chapter 63 with respect to a partnership adjustment (for example, in the context of an amended return modification described in § 301.6225–2(d)(2), the alternative procedure to filing amended returns as described in § 301.6225–2(d)(2)(x), or a closing agreement described in § 301.6225–2(d)(8)), those tax attributes are not adjusted under this section. Similarly, to the extent a partner filed a return inconsistent with the treatment of items on a partnership return, a reviewed year partner (or its successor) does not adjust its tax attributes to the extent the partner's prior return was consistent with the partnership adjustment. For the rules regarding consistent treatment by partners, see § 301.6222–1.

(5) *Election under section 6226—(i) In general.* Except as otherwise provided in paragraph (a)(5)(ii) of this section, tax attributes of a partnership and its partners are adjusted for a partnership adjustment that results in an imputed

underpayment with respect to which an election is made under § 301.6226–1 in accordance with § 301.6226–4, and not the rules of this section.

(ii) *Pass-through partners and indirect partners.* A pass-through partner (as defined in § 301.6241–1(a)(5)) that is a partnership and pays an imputed underpayment under § 301.6226–3(e)(4) treats its share of each partnership adjustment reflected on the relevant statement as a partnership adjustment described in paragraph (a)(1) of this section, treats the imputed underpayment under § 301.6226–3(e)(4)(iii) as an imputed underpayment determined under § 301.6225–1 for purposes of § 1.704–1(b)(2)(iii)(a) and (f) of this chapter, treats items arising from an adjustment that does not result in an imputed underpayment as an item under paragraph (d) of this section, and finally treats amounts with respect to any penalties, additions to tax, and additional amounts and interest computed as an amount described in § 1.704–1(b)(2)(iii)(f)(3) of this chapter.

(6) *Reflection of economic arrangement.* This section and the rules in § 1.704–1(b)(1)(viii), (b)(2)(iii)(a) and (f), (b)(2)(iv)(i)(4), and (b)(4)(xi), (xii), (xiii), (xiv), and (xv) of this chapter must be interpreted in a manner that reflects the economic arrangement of the parties and the principles of subchapter K of the Code, taking into account the rules of the centralized partnership audit regime.

(b) *Adjusting specified tax attributes in the case of a partnership adjustment that results in an imputed underpayment—(1) In general.* This paragraph (b) applies with respect to each partnership adjustment that was taken into account in the determination of the imputed underpayment under § 301.6225–1, except to the extent partner or partnership tax attributes were already adjusted as part of the partnership adjustment.

(2) *Book value and basis of partnership property.* Partnership-level specified tax attributes must be adjusted under this paragraph (b)(2). Specifically, the partnership must make appropriate adjustments to the book value and basis of property to take into account any partnership adjustment. No adjustments are made with respect to property that was held by the partnership in the reviewed year but is no longer held by the partnership in the adjustment year. Amounts determined under section 704(c) must also be adjusted to take into account the partnership adjustment.

(3) *Creation of notional items based on partnership adjustment—(i) In general.* In order to give appropriate effect to each partnership adjustment for

partner-level specified tax attributes, notional items are created with respect to each partnership adjustment, except as provided in paragraph (b)(4) of this section.

(ii) *Increase in income or gain.* In the case of a partnership adjustment that is an increase to income or gain, a notional item of income or gain is created in an amount equal to the partnership adjustment.

(iii) *Increase in expense or loss.* In the case of a partnership adjustment that is an increase to an expense or a loss, a notional item of an expense or loss is created in an amount equal to the partnership adjustment.

(iv) *Decrease in income or gain.* In the case of a partnership adjustment that is a decrease to income or gain, a notional item of expense or loss is created in an amount equal to the partnership adjustment.

(v) *Decrease in expense or loss.* In the case of a partnership adjustment that is a decrease to an expense or to a loss, a notional item of income or gain is created in an amount equal to the partnership adjustment.

(vi) *Credits.* If a partnership adjustment reflects a net increase or net decrease in credits as determined in accordance with § 301.6225-1, the partnership may have one or more notional items of income, gain, loss, or deduction that reflects the change in the item that gives rise to the credit, and those items are treated as items in paragraph (b)(3)(ii), (iii), (iv), or (v) of this section. For example, if a partnership adjustment is to a credit, a notional item of deduction may be created when appropriate. See section 280C.

(4) *Situations in which notional items are not created—*(i) *In general.* In the case of a partnership adjustment described in this paragraph (b)(4), or when the creation of a notional item would duplicate a specified tax attribute or an actual item already taken into account, notional items are not created. Nevertheless, in these situations specified tax attributes are adjusted for the partnership and its reviewed year partners or their successors (as defined in § 1.704-1(b)(i)(viii)(b) of this chapter) in a manner that is consistent with how the partnership adjustment would have been taken into account under the partnership agreement in effect for the reviewed year taking into account all facts and circumstances. See § 1.704-1(b)(2)(iii)(f)(4) of this chapter for rules for allocating the expenditure for an imputed underpayment in these circumstances.

(ii) *Adjustments for non-section 704(b) items.* Notional items are not

created for a partnership adjustment that does not derive from items that would have been allocated in the reviewed year under section 704(b). See paragraph (e) of this section, *Example 5*.

(iii) *Section 705(a)(2)(B) expenditures.* Notional items are not created for a partnership adjustment that is a change of an item of deduction to a section 705(a)(2)(B) expenditure.

(iv) *Tax-exempt income.* Notional items are not created for a partnership adjustment to an item of income of a partnership exempt from tax under subtitle A of the Code.

(5) *Allocation of the notional items.* Notional items are allocated to the reviewed year partners or their successors under § 1.704-1(b)(4)(xi) of this chapter.

(6) *Effect of notional items—*(i) *In general.* The partnership creates notional items of income, gain, loss, deduction, or credit in order to make appropriate adjustments to specified tax attributes. See paragraph (e), *Example 1* of this section.

(ii) *Partner capital accounts.* For purposes of capital accounts determined and maintained in accordance with § 1.704-1(b)(2) of this chapter, a notional item of income, gain, loss, deduction or credit is treated as an item of income, gain, loss, deduction or credit (including for purposes of determining book value). Similar adjustments may be appropriate for partnerships that do not determine and maintain capital accounts in accordance with § 1.704-1(b)(2) of this chapter.

(iii) *Partner's basis in its interest—*(A) *In general.* Except as otherwise provided, the basis of a partner's interest in a partnership is adjusted (but not below zero) to reflect any notional item allocated to the partner by treating the notional item as an item described in section 705(a).

(B) *Special basis rules.* The basis of a partner's interest in a partnership is not adjusted for any notional items allocated to the partner—

(1) When a partner that is not a tax-exempt entity (as defined in § 301.6225-2(d)(3)(ii)) is a successor under § 1.704-1(b)(1)(viii)(b) of this chapter to a reviewed year tax-exempt partner, to the extent that the IRS approved a modification under § 301.6225-2 because the tax-exempt partner was not subject to tax; or

(2) When the notional item would be allocated to a successor that is related (within the meaning of sections 267(b) or 707(b)) to the reviewed year partner, the successor acquired its interest from the reviewed year partner in a transaction (or series of transactions) in which not all gain or loss is recognized

during an administrative adjustment proceeding with respect to the partnership's reviewed year under subchapter C of chapter 63, and a principal purpose of the interest transfer (or transfers) was to shift the economic burden of the imputed underpayment among the related parties.

(c) *Determining a partner's share of an expenditure for any payment required to be made by a partnership under subchapter C of chapter 63.* Payment by a partnership of any amount required to be paid under subchapter C of chapter 63 as described in § 301.6241-4(a) is treated as an expenditure described in section 705(a)(2)(B). Rules for determining whether the economic effect of an allocation of these expenses is substantial are provided in § 1.704-1(b)(2)(iii)(f) of this chapter and rules for determining whether an allocation of these expenses is deemed to be in accordance with the partners' interests in the partnership are provided in § 1.704-1(b)(4)(xii) of this chapter.

(d) *Adjusting tax attributes for a partnership adjustment that does not result in an imputed underpayment.* The rules under subchapter K of the Code apply in the case of a partnership adjustment that does not result in an imputed underpayment. See § 301.6225-3(c). Accordingly, tax attributes (as defined in § 301.6241-1(a)(10)) of a partnership and its partners are adjusted under those rules. An item arising from a partnership adjustment that does not result in an imputed underpayment (as defined in § 301.6225-1(f)) is allocated under § 1.704-1(b)(4)(xiii) of this chapter.

(e) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, unless otherwise stated, Partnership is subject to the provisions of subchapter C of chapter 63, Partnership and its partners are calendar year taxpayers, all partners are U.S. persons, and the highest rate of income tax in effect for all taxpayers is 20 percent for all relevant periods.

*Example 1.* (i) In 2019, A, B, and C are individuals that form Partnership. A contributes Whiteacre, which is unimproved land with an adjusted basis of \$400 and a fair market value of \$1,000, and B and C each contribute \$1,000 in cash. The partnership agreement provides that all income, gain, loss, and deduction will be allocated in equal  $\frac{1}{3}$  shares among the partners. The partnership agreement also provides that the partners' capital accounts will be determined and maintained in accordance with § 1.704-1(b)(2)(iv) of this chapter, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit

balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as provided in

§ 1.704–1(b)(2)(ii)(b)(2) and (3) of this chapter).

(ii) Upon formation, Partnership has the following assets and capital accounts:

	Partnership basis	Book	Value		Outside basis	Book	Value
Cash .....	\$2,000	\$2,000	\$2,000	A	\$400	\$1,000	\$1,000
Whiteacre .....	400	1,000	1,000	B	1,000	1,000	1,000
				C	1,000	1,000	1,000
Totals .....	2,400	3,000	3,000		2,400	3,000	3,000

(iii) In 2019, Partnership makes a \$120 payment for Asset that it treats as a deductible expense on its partnership return.

	Partnership basis	Book	Value		Outside basis	Book	Value
Cash .....	\$1,880	\$1,880	\$1,880	A	\$360	\$960	\$1,000
Whiteacre .....	400	1,000	1,000	B	960	960	1,000
Asset .....	0	0	120	C	960	960	1,000
Totals .....	2,280	2,880	3,000		2,280	2,880	3,000

(iv) Partnership does not file an AAR for 2020. In 2021 (the adjustment year) it is finally determined that Partnership's \$120 expenditure was not allowed as a deduction in 2019 (the reviewed year), but rather was the acquisition of an asset for which cost recovery deductions are unavailable. Accordingly, the IRS makes a partnership adjustment that disallows the entire \$120 deduction, which results in an imputed underpayment of \$48 (\$120 × 40 percent). Partnership did not request modification under § 301.6225–2. Partnership pays the \$48 imputed underpayment.

(v) Partnership first determines its tax attribute adjustments resulting from the partnership adjustment by applying paragraph (b) of this section. Pursuant to paragraph (b)(2) of this section, Partnership must re-state the basis and book value of Asset to \$120. Further, pursuant to paragraph (b)(3)(v) of this section, a \$120 notional item

of income is created. The \$120 item of notional income is allocated in equal shares (\$40) to A, B, and C in 2021 under § 1.704–1(b)(4)(xi) of this chapter. Accordingly, in 2021 Partnership increases the capital accounts of A, B, and C by \$40 each, and increases A, B, and C's outside bases by \$40 each under paragraph (b)(6)(ii) and (iii) of this section, respectively.

(vi) As described in paragraph (c) of this section, Partnership's payment of the \$48 imputed underpayment is treated as an expenditure described in section 705(a)(2)(B) under § 301.6241–4. Under § 1.704–1(b)(4)(xii) of this chapter, Partnership determines each partner's properly allocable share of this expenditure in 2021 by allocating the expenditure in proportion to the allocations of the notional item to which the expenditure relates. Accordingly, each of A, B, and C have a properly allocable share of \$16 each, which is the same proportion (1/3

each) in which A, B, and C share the \$120 item of notional income. Thus, A, B and C's capital accounts are each decreased by \$16 in 2021 and A, B and C's outside bases are each decreased by \$16 in 2021. The allocation of the expenditure under the partnership agreement has economic effect under § 1.704–1(b)(2)(ii) of this chapter and, because the allocation of the expenditure is determined in accordance with § 1.704–1(b)(2)(iii)(f) of this chapter, the economic effect of these allocations is deemed to be substantial.

(vii) The payment is also reflected by a \$48 decrease in partnership cash for book purposes under § 1.704–1(b)(4)(ii) of this chapter. Therefore, in 2021, A's basis in Partnership is \$384 and his capital account is \$984. B and C each have a basis and capital account of \$984.

	Partnership basis	Book	Value		Outside basis	Book	Value
Cash .....	\$1,832	\$1,832	\$1,832	A	\$384	\$984	\$984
Whiteacre .....	400	1,000	1,000	B	984	984	984
Asset .....	120	120	120	C	984	984	984
Totals .....	2,352	2,952	2,952		2,352	2,952	2,952

*Example 2.* (i) The facts are the same as in *Example 1* of this paragraph (e), except the IRS approves modification under § 301.6225–2(d)(3) with respect to A, which is a tax-exempt entity, and under § 301.6225–2(d)(4) with respect to C, which is a corporation subject to a tax rate of 20 percent. These modifications reduce Partnership's overall imputed underpayment from \$48 to \$30.

(ii) As in *Example 1* of this paragraph (e), Partnership determines its tax attribute adjustments resulting from the partnership adjustment by applying paragraph (b) of this section. Pursuant to paragraph (b)(3)(v) of

this section, a \$120 notional item of income is created. The \$120 item of notional income is allocated in equal shares (\$40) to A, B, and C in 2021 under § 1.704–1(b)(4)(xi) of this chapter. Accordingly, in 2021 Partnership increases the capital accounts of A, B, and C by \$40 each, and increases A, B, and C's outside bases by \$40 each under paragraph (b)(6)(ii) and (iii) of this section, respectively.

(iii) However, the modifications affect how Partnership must allocate the imputed underpayment expenditure among A, B, and C in 2021 (the adjustment year) pursuant to § 1.704–1(b)(2)(iii)(f) of this chapter.

Specifically, Partnership allocates the \$24 expenditure in 2021 in proportion to the allocation of the notional item to which it relates (which is 1/3 each as in *Example 1* of this paragraph (e)), but it must also take into account modifications attributable to each partner. Accordingly, B's allocation is \$16 (its share of the imputed underpayment, for which no modification occurred), and A and C have properly allocable shares of \$0 and \$8, respectively (their shares, taking into account modification). Thus, A's capital account is decreased by \$0, B's capital account is decreased by \$16, and C's capital



account is decreased by \$8 in 2021 and their respective outside bases are decreased by the same amounts in 2021.

(iv) The payment is also reflected by a \$24 decrease in partnership cash for book purposes. Therefore, in 2021, A's basis in Partnership is \$400 and his capital account

is \$1000, B's basis and capital account are both \$984, and C's basis and capital account are both \$992.

	Partnership basis	Book	Value		Outside basis	Book	Value
Cash .....	\$1,856	\$1,856	\$1,856	A	\$400	\$1,000	\$1,000
Whiteacre .....	400	1,000	1,000	B	984	984	984
Asset .....	120	120	120	C	992	992	992
Totals .....	2,376	2,976	2,976	.....	2,376	2,976	2,976

**Example 3.** The facts are the same as in Example 1 of this paragraph (e). However, in 2020, C transfers its entire interest in Partnership to D (an individual) for cash. Under § 1.704-1(b)(2)(iv)(l) of this chapter, C's capital account carries over to D. In 2021, the year the IRS determines that Partnership's \$120 expense is not allowed as a deduction, D is C's successor under § 1.704-1(b)(1)(viii)(b)(2) of this chapter with respect to specified tax attributes and the payment of the imputed underpayment treated as an expenditure under section 705(a)(2)(B).

**Example 4.** The facts are the same as in Example 1 of this paragraph (e), except that the partnership agreement provides that the section 705(a)(2)(B) expenditure for imputed underpayments made by the partnership are specially allocated to A (all other items continue to be allocated in equal shares). Accordingly, in 2021, the section 705(a)(2)(B) expenditure is allocated entirely to A, which reduces its capital account by \$48, which has economic effect under § 1.704-1(b)(2)(ii) of this chapter. However, the economic effect of this allocation is not substantial under § 1.704-1(b)(2)(iii)(a) of this chapter because it is not allocated in the manner described in § 1.704-1(b)(2)(iii)(f) of this chapter. The allocation will also not be deemed to be in accordance with the partners' interests in the partnership under § 1.704-1(b)(3)(ix) of this chapter because it is not allocated pursuant to the rules under § 1.704-1(b)(4)(xii) of this chapter.

**Example 5.** (i) In 2019, Partnership has two partners, A and B. Both A and B have a \$0 basis in their interests in Partnership. Further, Partnership has a \$200 liability as defined in § 1.752-1(a)(4) of this chapter. The liability is treated as a nonrecourse liability as defined in § 1.752-1(a)(2) of this chapter so that A and B both are treated as having a \$100 share of the liability under § 1.752-3 of this chapter. In 2021 (the adjustment year), the IRS determines that the liability was inappropriately classified as a nonrecourse liability, should have been classified as a recourse liability as defined in § 1.752-1(a)(1) of this chapter, and that A should have no share of the recourse liability under § 1.752-2 of this chapter. The recharacterization of the liability from nonrecourse to recourse and the decrease in A's share of partnership liabilities are adjustments that are not allocated under section 704(b) under § 301.6225-1(c)(5)(ii). As a result of the adjustments, the IRS includes in the residual grouping \$100 of increased income to account for the

cumulative effects of these adjustments to reflect the \$100 decrease in A's share of partnership liabilities under §§ 1.752-1(c) and 1.731-1(a)(1)(i) of this chapter and determines an imputed underpayment of \$40 (\$100 × 40 percent). Partnership does not request modification under § 301.6225-2. Partnership pays the \$40 imputed underpayment.

(ii) Pursuant to paragraph (b)(4)(ii) of this of this section, notional items are not created with respect to this partnership adjustment. Instead, under paragraph (b)(4)(i) of this section, specified tax attributes are adjusted in a manner that is consistent with how the partnership adjustment would have been taken into account under the partnership agreement in effect for the reviewed year taking into account all facts and circumstances. In this case, no specified tax attributes are adjusted.

(iii) However, because A would have borne the economic burden of the partnership adjustment if the partnership and its partners had originally reported in a manner consistent with the partnership adjustment, the \$40 imputed underpayment section 705(a)(2)(B) expenditure is allocated to A under § 1.704-1(b)(2)(iii)(f)(4) of this chapter.

(f) **Applicability date—(1) In general.** Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) **Election under § 301.9100-22 in effect.** This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par. 12.** Section 301.6226-1 is added to read as follows:

**§ 301.6226-1 Election for an alternative to the payment of the imputed underpayment.**

(a) **In general.** A partnership may elect under this section an alternative to the payment by the partnership of an imputed underpayment determined under section 6225 and the regulations thereunder. In addition, a partnership making a valid election under paragraph (b) of this section is no longer liable for the imputed underpayment (as defined in § 301.6241-1(a)(3)) to which the election applies. If a notice of final partnership adjustment (FPA) mailed under section 6231 includes more than

one imputed underpayment (as described in § 301.6225-1(g)), a partnership may make an election under this section with respect to one or more imputed underpayments identified in the FPA. See § 301.6226-2(f) regarding the determination of each reviewed year partner's (as defined in § 301.6241-1(a)(9)) share of the partnership adjustments (as defined in § 301.6241-1(a)(6)) and related penalties, additions to tax, and additional amounts that must be taken into account.

(b) **Effect of election—(1) Reviewed year partners.** If a partnership makes a valid election under this section with respect to any imputed underpayment, the reviewed year partners must take into account their share of the partnership adjustments that relate to that imputed underpayment and are liable for any tax, penalties, additions to tax, additional amounts, and interest as described in § 301.6226-3. If an election is made under this section, any modification approved by the IRS under § 301.6225-2 is taken into account by the reviewed year partners in accordance with § 301.6226-2(f)(2).

(2) **Partnership.** A partnership making a valid election under this section is not liable for the imputed underpayment to which the election applies (and no assessment of tax, levy, or proceeding in any court for the collection of such imputed underpayment may be made against such partnership). Any adjustments that do not result in an imputed underpayment described in § 301.6225-1(f) that are associated with an imputed underpayment (as described in § 301.6225-1(g)) for which an election under this section is made are not taken into account by the partnership in the adjustment year (as defined in § 301.6241-1(a)(1)) and instead each reviewed year partners' share of the adjustment determined in accordance with § 301.6226-2(f) must be included on the statement described in § 301.6226-2.

(c) **Time, form, and manner for making the election—(1) In general.** An election under this section is valid only if all of the provisions of this section

and § 301.6226–2 (regarding statements filed with the Internal Revenue Service (IRS) and furnished to reviewed year partners) are satisfied. However, an election under this section is valid until the IRS determines that the election is invalid. An election under this section may only be revoked with the consent of the IRS.

(2) *Invalid election.* If an election under this section is determined by the IRS to be invalid, the IRS will notify the partnership and the partnership representative within 30 days of the determination that the election is invalid and the reason for the determination that the election is invalid. If the IRS makes a determination that an election under this section is invalid, section 6225 applies with respect to the imputed underpayment as if the election was never made, the IRS may assess the imputed underpayment against the partnership (without regard to the limitations under section 6232(b)), and the partnership must pay the imputed underpayment under section 6225 and any penalties and interest under section 6233. An election under this section may be determined to be invalid even if a correction is made in accordance with § 301.6226–2(d)(2) or if a correction is not made as required in accordance with § 301.6226–2(d)(3). However, the IRS has no obligation to require correction of errors discovered by the IRS and may determine an election to be invalid without providing an opportunity to correct under § 301.6226–2(d)(3).

(3) *Time for making the election.* An election under this section must be filed within 45 days of the date the FPA is mailed by the IRS. The time for filing such an election may not be extended.

(4) *Form and manner of the election—*

(i) *In general.* An election under this section must be signed by the partnership representative and filed in accordance with forms, instructions, and other guidance and include the information specified in paragraph (c)(4)(ii) of this section.

(ii) *Contents of the election.* An election under this section must include the following correct information—

(A) The name, address, and taxpayer identification number (TIN) of the partnership,

(B) The taxable year to which the election relates,

(C) A copy of the FPA to which the election relates,

(D) In the case of an FPA that includes more than one imputed underpayment, identification of the imputed underpayment(s) to which the election applies,

(E) Each reviewed year partner's name, address, and TIN, and

(F) Any other information prescribed by the IRS in forms, instructions, and other guidance.

(d) *Binding nature of statements.* The election under this section, which includes filing and furnishing statements described in § 301.6226–2, are actions of the partnership under section 6223 and the regulations thereunder and, unless determined otherwise by the IRS, the partner's share of the adjustments and the applicability of any penalties, additions to tax, and additional amounts as set forth in the statement are binding on the partner pursuant to section 6223. Accordingly, a partner may not treat any partnership-related items (as defined in § 301.6241–6) reflected on a statement described in § 301.6226–2 on the partner's return inconsistently with how those items are treated on the statement that is filed with the IRS. See § 301.6222–1(c)(2) (regarding partnership-related items the treatment of which a partner is bound to under section 6223).

(e) *Coordination with section 6234 regarding judicial review.* Nothing in this section affects the rules regarding judicial review of a partnership adjustment. Accordingly, a partnership that makes an election under this section is not precluded from filing a petition under section 6234(a). See § 301.6226–2(b)(3), *Example 3*.

(f) *Applicability date—*(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 13.** Section 301.6226–2 is added to read as follows:

**§ 301.6226–2 Statements furnished to partners and filed with the IRS.**

(a) *In general.* A partnership that makes an election under § 301.6226–1 must furnish to each reviewed year partner (as defined in § 301.6241–1(a)(9)) and file with the Internal Revenue Service (IRS) a statement that includes the items required by paragraphs (e) and (f) of this section with respect to each reviewed year partner's share of partnership adjustments (as defined in § 301.6241–1(a)(6)) associated with the imputed underpayment for which an election under § 301.6226–1 is made. The statements furnished to the reviewed year partners under this section are in

addition to, and must be filed and furnished separate from, any other statements required to be filed with the IRS and furnished to partners, including any statements under section 6031(b). A separate statement under this section must be furnished to each reviewed year partner with respect to each reviewed year (as defined in § 301.6241–1(a)(8)) subject to an election under § 301.6226–1.

(b) *Time and manner for furnishing the statements to partners—*(1) *In general.* The statements described in paragraph (a) of this section must be furnished to the reviewed year partners no later than 60 days after the date all of the partnership adjustments to which the statement relates are finally determined. The partnership adjustments are finally determined upon the later of:

(i) The expiration of the time to file a petition under section 6234, or

(ii) If a petition under section 6234 is filed, the date when the court's decision becomes final.

(2) *Address used for reviewed year partners.* The partnership must furnish the statement described in paragraph (a) of this section to each reviewed year partner in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership mails the statement, it must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. If a statement is returned to the partnership as undeliverable, the partnership must undertake reasonable diligence to identify a correct address for the reviewed year partner to which the statement relates.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b).

*Example 1.* During Partnership's 2020 taxable year, A, an individual, was a partner in Partnership and had an address at 123 Main St. On February 1, 2021, A sells his interest in Partnership and informs Partnership that A moved to 456 Broad St. On March 15, 2021, Partnership mails A's statement under section 6031(b) for the 2020 taxable year to 456 Broad St. On June 1, 2023, A moves again but does not inform Partnership of A's new address. In 2023, the IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year and mails a notice of final partnership adjustment (FPA) to Partnership for that year setting forth a single imputed underpayment. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment and on May 31, 2024, timely mails a statement described in paragraph (a) of this section to A at 456 Broad St. Although the statement was mailed to the last address for A that was known to Partnership, it is returned to Partnership as undeliverable

because unknown to Partnership, A had moved. After undertaking reasonable diligence to obtain the correct address of A, Partnership is unable to ascertain the correct address. Therefore, pursuant to paragraph (b)(2) of this section, Partnership properly furnished the statement to A when it mailed the statement to 456 Broad St.

*Example 2.* The facts are the same as in *Example 1* of this paragraph (b)(3), except that A lives at 789 Forest Ave. during all of 2024 and reasonable diligence would have revealed that 789 Forest Ave. is the correct address for A, but Partnership did not undertake such diligence. Because the statement was returned as undeliverable and Partnership did not undertake reasonable diligence to obtain the correct address for A, Partnership failed to properly furnish the statement with respect to A pursuant to paragraph (b)(2) of this section.

*Example 3.* Partnership is a calendar year taxpayer. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year. On January 1, 2024, the IRS mails an FPA with respect to the 2020 taxable year to Partnership setting forth a single imputed underpayment. Partnership makes a timely election under section 6226 in accordance with § 301.6226-1 with respect to the imputed underpayment. Partnership timely files a petition for readjustment under section 6234 with the Tax Court. The IRS prevails, and the Tax Court sustains all of the adjustments in the FPA with respect to the 2020 taxable year. The time to appeal the Tax Court decision expires, and the Tax Court decision becomes final on April 10, 2025. Under paragraph (b)(1)(ii) of this section, the adjustments in the FPA are finally determined on April 10, 2025, and Partnership must furnish the statements described in paragraph (a) of this section to its reviewed year partners and electronically file the statements with the IRS no later than June 9, 2025. See paragraph (c) of this section for the rules regarding filing the statements with the IRS.

(c) *Time and manner for filing the statements with the IRS.* No later than 60 days after the date the partnership adjustments are finally determined (as described in paragraph (b)(1) of this section), the partnership must electronically file with the IRS the statements that the partnership furnishes to each reviewed year partner under this section, along with a transmittal that includes a summary of the statements filed and such other information required in forms, instructions, and other guidance prescribed by the IRS.

(d) *Correction of statements—(1) In general.* A partnership corrects an error in a statement furnished under paragraph (b) of this section or filed under paragraph (c) of this section by filing the corrected statement with the IRS in the manner prescribed in paragraph (c) of this section and furnishing a copy of the corrected statement to the reviewed year partner

to whom the statement relates in accordance with the forms, instructions, and other guidance prescribed by the IRS.

(2) *Error discovered by partnership—(i) Discovery within 60 days of statement due date.* If a partnership discovers an error in a statement within 60 days of the due date for furnishing the statements to partners and filing the statements with the IRS (as described in paragraphs (b) and (c) of this section and § 301.6226-3(e)(3)(ii)), the partnership must correct the error in accordance with paragraph (d)(1) of this section and does not have to seek consent of the IRS prior to doing so.

(ii) *Error discovered more than 60 days after statement due date.* If a partnership discovers an error more than 60 days after the due date for furnishing the statements to partners and filing the statements with the IRS (as described in paragraphs (b) and (c) of this section and § 301.6226-3(e)(3)(ii)), the partnership may only correct the error after receiving consent of the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS. The partnership may not furnish corrected statements unless it receives consent of the IRS to make the correction.

(3) *Error discovered by the IRS.* If the IRS discovers an error in the statements furnished or filed under paragraphs (b) and (c) of this section and § 301.6226-3(e)(3) or the IRS cannot determine whether the statements furnished or filed by the partnership are correct because of a failure by the partnership to comply with any requirement under this section or § 301.6226-3(e), the IRS may require the partnership to correct such errors in accordance with paragraph (d)(1) of this section or to provide additional information as necessary. Failure by the partnership to correct an error or to provide information when required by the IRS may be treated by the IRS as a failure to properly furnish correct statements to partners and file the correct statements with the IRS as described in paragraphs (b) and (c) of this section or in § 301.6226-3(e)(3). Whether the IRS requires the partnership to correct any errors discovered by the IRS or provide additional information is discretionary on the part of the IRS and the IRS is under no obligation to require the partnership to provide additional information or to correct any errors discovered or brought to the IRS's attention at any time.

(4) *Adjustments in the corrected statements taken into account by the reviewed year partners.* The adjustments included on a corrected statement are

taken into account by a reviewed year partner in accordance with § 301.6226-3 for the reporting year (as defined in § 301.6226-3(a)).

(e) *Content of the statements.* Each statement described in paragraph (a) of this section must include the following correct information:

(1) The name and TIN of the reviewed year partner to whom the statement is being furnished;

(2) The current or last address of the reviewed year partner that is known to the partnership;

(3) The reviewed year partner's share of items as originally reported for the reviewed year to the partner on statements furnished to the partner under section 6031(b) and, if applicable, section 6227;

(4) The reviewed year partner's share of partnership adjustments determined under paragraph (f)(1) of this section;

(5) Modifications approved by the IRS with respect to the reviewed year partner (or with respect to any indirect partner (as defined in § 301.6241-1(a)(4)) that holds its interest in the partnership through its interest in the reviewed year partner);

(6) The applicability of any penalty, addition to tax, or additional amount determined at the partnership level that relates to any adjustments allocable to the reviewed year partner and the adjustments to which the penalty, addition to tax, or additional amount relates, the section of the Internal Revenue Code (Code) under which each penalty, addition to tax, or additional amount is imposed, and the applicable rate of each penalty, addition to tax, or additional amount determined at the partnership level;

(7) The date the statement is furnished to the reviewed year partner;

(8) The partnership taxable year to which the adjustments relate; and

(9) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(f) *Determination of each partner's share of adjustments—(1) Adjustments and other amounts—(i) In general.* Except as described in paragraphs (f)(1)(ii), (f)(1)(iii), or (f)(2) of this section, the adjustments set forth in the statement described in paragraph (a) of this section are reported to the reviewed year partner in the same manner as each adjusted partnership-related item was originally allocated to the reviewed year partner on the partnership return for the reviewed year.

(ii) *Adjusted partnership-related item not reported on the partnership's return for the reviewed year.* Except as described in paragraph (f)(1)(iii) of this section, if the adjusted partnership-

related item was not reported on the partnership return for the reviewed year, each reviewed year partner's share of the adjustments must be determined in accordance with how such partnership-related items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement.

(iii) *Adjustments that specifically allocate items.* If an adjustment involves an allocation of a partnership-related item to a specific partner or in a specific manner, including a reallocation of such an item, the reviewed year partner's share of the adjustment set forth in the statement is determined in accordance with the adjustment as finally determined (as described in paragraph (b)(1) of this section).

(2) *Treatment of modifications disregarded.* Any modifications approved by the IRS with respect to the reviewed year partner (or with respect to any indirect partner (as defined in § 301.6241-1(a)(4)) that holds its interest in the partnership through its interest in the reviewed year partner) under § 301.6225-2 are disregarded for purposes of determining each partner's share of the adjustments under paragraph (f)(1) of this section.

(g) *Coordination with other provisions under subtitle A of the Code—(1) Statements furnished to qualified investment entities described in section 860.* If a reviewed year partner is a qualified investment entity within the meaning of section 860(b) and the partner receives a statement described in paragraph (a) of this section, the partner may be able to avail itself of the deficiency dividend procedure described in § 301.6226-3(b)(4).

(2) *Liability for tax under section 7704(g)(3).* An election under this section has no effect on a partnership's liability for any tax under section 7704(g)(3) (regarding the exception for electing 1987 partnerships from the general rule that certain publicly traded partnerships are treated as corporations).

(3) *Adjustments subject to chapters 3 and 4.* A partnership that makes an election under § 301.6226-1 with respect to an imputed underpayment must pay the amount of tax required to be withheld under chapter 3 or chapter 4, if any, in accordance with § 301.6241-7(b)(4).

(h) *Applicability date—(1) In general.* Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100-22 in effect.* This section applies to any

partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par. 14.** Section 301.6226-3 is added to read as follows:

**§ 301.6226-3 Adjustments taken into account by partners.**

(a) *Effect of taking adjustments into account on tax imposed by chapter 1.* Except as otherwise provided in this section, the tax imposed by chapter 1 of subtitle A of the Internal Revenue Code (chapter 1 tax) for each reviewed year partner (as defined in § 301.6241-1(a)(9)) for the taxable year that includes the date a statement was furnished in accordance with § 301.6226-2 (the reporting year) is increased by the additional reporting year tax, or if the additional reporting year tax is less than zero, decreased by such amount. The additional reporting year tax is the aggregate of the correction amounts (determined in accordance with paragraph (b) of this section). In addition to being liable for the additional reporting year tax, a reviewed year partner must also calculate and pay for the reporting year any penalties, additions to tax, and additional amounts (as determined under paragraph (d) of this section). Finally, a reviewed year partner must also calculate and pay for the reporting year any interest (as determined under paragraph (c) of this section).

(b) *Determining the aggregate of the correction amounts—(1) In general.* For purposes of paragraph (a) of this section, the aggregate of the correction amounts is the sum of the correction amounts described in paragraphs (b)(2) and (3) of this section. A correction amount under paragraph (b)(2) or (3) of this section may be less than zero, and any correction amount that is less than zero may reduce any other correction amount with the result that the aggregate of the correction amounts under this paragraph (b)(1) may also be less than zero. However, see paragraphs (c) and (d) of this section requiring a separate determination of interest and penalties, additions to tax, and additional amounts on the correction amount for each applicable taxable year (as defined in paragraph (c)(1) of this section) without regard to the correction amount for any other applicable taxable year.

(2) *Correction amount for the first affected year—(i) In general.* The correction amount for the taxable year of the partner that includes the end of the reviewed year (the first affected year) is the amount by which the reviewed year partner's chapter 1 tax would increase or decrease for the first affected year if

the partner's taxable income for such year was recomputed by taking into account the reviewed year partner's share of the partnership adjustments (as defined in § 301.6241-1(a)(6)) reflected on the statement described in § 301.6226-2 with respect to the partner.

(ii) *Calculation of the correction amount for the first affected year.* The correction amount is the amount of chapter 1 tax that would have been imposed for the first affected year if the items as adjusted in the statement described in § 301.6226-2 had been reported as such on the return for the first affected year less the sum of:

(A) The amount of chapter 1 tax shown by the partner on the return for the first affected year (which includes amounts shown on an amended return for such year, including an amended return filed, or alternative to an amended return submitted, under section 6225(c)(2) by the reviewed year partner), plus

(B) Amounts not so shown previously assessed (or collected without assessment) (as defined in § 1.6664-2(d) of this chapter), less

(C) The amount of rebates made (as defined in § 1.6664-2(e) of this chapter).

(iii) *Definition of the correction amount for the first affected year.* The correction amount also may be expressed as—

$$\text{Correction amount} = A - (B + C - D),$$

Where A = the amount of chapter 1 tax that would have been imposed had the items as adjusted been properly reported on the return for the first affected year; B = the amount shown as chapter 1 tax on the return for the first affected year (taking into account amended returns (or alternatives)); C = amounts not so shown previously assessed (or collected without assessment); and D = the amount of rebates made.

(3) *Correction amount for the intervening years—(i) In general.* The correction amount for all taxable years after the first affected year and before the reporting year (the intervening years) is the aggregate of the correction amounts determined for each intervening year. Determining the correction amount for each intervening year is a year-by-year determination. The correction amount for each intervening year is the amount by which the reviewed year partner's chapter 1 tax for such year would increase or decrease if the partner's taxable income for such year was recomputed by taking into account any adjustments to tax attributes (as defined in § 301.6241-1(a)(10)) of the partner under this paragraph (b)(3).

(ii) *Calculation of the correction amount for the intervening years.* The correction amount for each intervening year is the amount of chapter 1 tax that would have been imposed for the intervening year if any tax attribute of the partner for the intervening year had been adjusted after taking into account the reviewed year partner's share of the adjustments for the first affected year as described in paragraph (b)(2) of this section (and if any tax attribute of the partner for the intervening year had been adjusted, after taking into account any adjustments to tax attributes of the partner in any prior intervening year(s)) exceeds less the sum of—

(A) The amount of chapter 1 tax shown by the partner on the return for the intervening year (which includes amounts shown on an amended return for such year, including an amended return filed, or alternative to an amended return submitted, under section 6225(c)(2) by a reviewed year partner), plus

(B) Amounts not so shown previously assessed (or collected without assessment) (as defined in § 1.6664–2(d) of this chapter), less

(C) The amount of rebates made (as defined in § 1.6664–2(e) of this chapter).

(iii) *Definition of the correction amount for the intervening years.* The correction amount also may be expressed as—

$$\text{Correction amount} = A - (B + C - D),$$

Where A = the amount of chapter 1 tax that would have been imposed for the intervening year; B = the amount shown as chapter 1 tax on the return for the intervening year (taking into account amended returns (or alternatives)); C = amounts not so shown previously assessed (or collected without assessment); and D = the amount of rebates made.

(4) *Coordination of sections 860 and 6226.* If a qualified investment entity (QIE) within the meaning of section 860(b) receives a statement described in § 301.6226–2(a) and correctly makes a determination within the meaning of section 860(e)(4) that one or more of the adjustments reflected in the statement is an adjustment within the meaning of section 860(d) with respect to that QIE for a taxable year, the QIE may distribute deficiency dividends within the meaning of section 860(f) for that taxable year and avail itself of the deficiency dividend procedures set forth in section 860. If the QIE utilizes the deficiency dividend procedures with respect to adjustments in a statement described in § 301.6226–2(a), the QIE may claim a deduction for deficiency dividends against the adjustments furnished to the QIE in the statement in

calculating any correction amounts under paragraphs (b)(2) and (3) of this section, and interest on such correction amounts under paragraph (c) of this section, to the extent that the QIE makes deficiency dividend distributions under section 860(f) and complies with all requirements of section 860 and the regulations thereunder.

(c) *Interest—(1) Interest on the correction amounts.* Interest on the correction amounts determined under paragraph (b) of this section is the aggregate of all interest calculated for each applicable taxable year in which there was a correction amount greater than zero at the rate set forth in paragraph (c)(3) of this section. For each applicable taxable year, interest on the correction amount is calculated from the due date (without extension) of the reviewed year partner's return for such applicable taxable year until the amount is paid. For purposes of this paragraph (c)(1), the term *applicable taxable year* means the reviewed year partner's taxable year affected by taking into account adjustments as described in paragraph (b) of this section (for instance, the first affected year and any intervening year in which there is a correction amount greater than zero). For purposes of calculating interest under this paragraph (c), a correction amount under paragraph (b)(2) or (3) of this section for an applicable taxable year that is less than zero does not reduce the correction amount for any other applicable taxable year.

(2) *Interest on penalties.* Interest on any penalties, additions to tax, or additional amounts determined under paragraph (d) of this section is calculated at the rate set forth in paragraph (c)(3) of this section from the due date (without extension) of the reviewed year partner's return for the applicable taxable year until the amount is paid.

(3) *Rate of interest.* For purposes of paragraph (c) of this section, interest is calculated using the underpayment rate under section 6621(a)(2) by substituting “5 percentage points” for “3 percentage points” in section 6621(a)(2)(B).

(d) *Penalties—(1) Applicability determined at the partnership level.* In the case of a partnership that makes an election under section 6226, the applicability of any penalty, addition to tax, and additional amount that relates to an adjustment to any partnership-related item is determined at the partnership level in accordance with section 6221(a). The partnership's reviewed year partners are liable for such penalties, additions to tax, and additional amounts as determined under paragraph (d)(2) of this section.

(2) *Amount calculated at partner level.* A reviewed year partner calculates the amount of any penalty, addition to tax, or additional amount relating to the partnership adjustments taken into account under paragraph (b)(1) of this section as if the correction amount were an underpayment or understatement of the reviewed year partner for the first affected year or intervening year, as applicable. The calculation of any penalty, addition to tax, or additional amount is based on the characteristics of, and facts and circumstances applicable to, the reviewed year partner for the first affected year or intervening year, as applicable after taking into account the partnership adjustments reflected on the statement. If after taking into account the partnership adjustments in accordance with this section, the reviewed year partner does not have an underpayment, or has an understatement that falls below the applicable threshold for the imposition of a penalty, no penalty is due from that reviewed year partner under this paragraph (d)(2). For penalties in the case of a pass-through partner that makes a payment under paragraph (e)(4) of this section, see paragraph (e)(4)(iv) of this section.

(3) *Partner-level defenses to penalties.* A reviewed year partner claiming that a penalty, addition to tax, or additional amount that relates to a partnership adjustment reflected on a statement described in § 301.6226–2 (or paragraph (e)(3) of this section) is not due because of a partner-level defense must first pay the penalty and file a claim for refund for the reporting year. Partner-level defenses are limited to those that are personal to the reviewed year partner (for example, a reasonable cause and good faith defense under section 6664(c) that is based on the facts and circumstances applicable to the partner).

(e) *Pass-through partners—(1) In general.* Except as provided in paragraph (e)(6) of this section, if a pass-through partner (as defined in § 301.6241–1(a)(5)) is furnished a statement described in § 301.6226–2 (including a statement described in paragraph (e)(3) of this section) with respect to adjustments of a partnership that made an election under § 301.6226–1 (audited partnership), the pass-through partner must file with the IRS a partnership adjustment tracking report in accordance with forms, instructions, or other guidance prescribed by the IRS on or before the due date described in paragraph (e)(3)(ii) of this section, and file and furnish statements in accordance with paragraph (e)(3) of this section. The pass-through partner must

comply with paragraph (e) of this section with respect to each statement furnished to the pass-through partner.

(2) *Failure to file and furnish required documents*—(i) *Failure to timely file and furnish statements.* If any pass-through partner fails to timely file and furnish correct statements in accordance with paragraph (e)(3) of this section, the pass-through partner must compute and pay an imputed underpayment, as well as any penalties, additions to tax, additional amounts, and interest with respect to the adjustments reflected on the statement furnished to the pass-through partner in accordance with paragraph (e)(4) of this section. The IRS may assess such imputed underpayment against such pass-through partner without regard to the limitations under section 6232(b). See § 301.6232–1(c)(2). A failure to furnish statements in accordance with paragraph (e)(3) of this section is treated as a failure to timely pay an imputed underpayment required under paragraph (e)(4)(i) of this section, unless the pass-through partner computes and pays an imputed underpayment in accordance with paragraph (e)(4) of this section. See section 6651(i).

(ii) *Failures relating to partnership adjustment tracking report.* Failure to timely file the partnership adjustment tracking report as required in paragraph (e)(1) of this section, or filing such report without showing the information required under paragraph (e)(1) of this section, is subject to the penalty imposed by section 6698.

(3) *Furnishing statements to partners*—(i) *In general.* A pass-through partner described in paragraph (e)(1) of this section must furnish a statement that includes the items required by paragraph (e)(3)(iii) of this section to each partner that held an interest in the pass-through partner at any time during the taxable year of the pass-through partner to which the adjustments in the statement furnished to the pass-through partner relate (affected partner). The statements described in this paragraph (e)(3) must be filed with the IRS by the due date prescribed in paragraph (e)(3)(ii) of this section. Except as otherwise provided in paragraphs (e)(3)(ii), (iii), and (v) of this section, the rules applicable to statements described in § 301.6226–2 are applicable to statements described in this paragraph (e)(3).

(ii) *Time for filing and furnishing the statements.* The pass-through partner must file with the IRS and furnish to its affected partners the statements described in paragraph (e)(3) of this section no later than the extended due date for the return for the adjustment

year (as defined in § 301.6241–1(a)(1)) of the audited partnership. For purposes of this section, the extended due date is the extended due date under section 6081 regardless of whether the audited partnership is required to file a return for the adjustment year or timely files a request for an extension under section 6081 and the regulations thereunder.

(iii) *Contents of statements.* Each statement described in paragraph (e)(3) of this section must include the following correct information—

(A) The name and taxpayer identification number (TIN) of the audited partnership;

(B) The adjustment year of the audited partnership;

(C) The extended due date for the return for the adjustment year of the audited partnership (as described in paragraph (e)(3)(ii) of this section);

(D) The date on which the audited partnership furnished its statements required under § 301.6226–2(b);

(E) The name and TIN of the partnership that furnished the statement to the pass-through partner if different from the audited partnership;

(F) The name and TIN of the pass-through partner;

(G) The pass-through partner's taxable year to which the adjustments reflected on the statements described in paragraph (e)(3) of this section relates;

(H) The name and TIN of the affected partner to whom the statement is being furnished;

(I) The current or last address of the affected partner that is known to the pass-through partner;

(J) The affected partner's share of items as originally reported to such partner under section 6031(b) and, if applicable, section 6227, for the taxable year to which the adjustments reflected on the statement furnished to the pass-through partner relate;

(K) The affected partner's share of partnership adjustments determined under § 301.6226–2(f)(1) as if the affected partner were the reviewed year partner and the pass-through partner were the partnership;

(L) Modifications approved by the IRS with respect to the affected partner that holds its interest in the audited partnership through the pass-through partner;

(M) The applicability of any penalties, additions to tax, or additional amounts that relate to any adjustments allocable to the affected partner and the adjustments allocated to the affected partner to which such penalties, additions to tax, or additional amounts relate, the section of the Internal Revenue Code under which each penalty, addition to tax, or additional

amount is imposed, and the applicable rate of each penalty, addition to tax, or additional amount; and

(N) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(iv) *Affected partner must take into account the adjustments.* A statement furnished to an affected partner in accordance with paragraph (e)(3) of this section is treated as if it were a statement described in § 301.6226–2. An affected partner that is a pass-through partner must take into account the adjustments reflected on such a statement in accordance with this paragraph (e). An affected partner that is not a pass-through partner must take into account the adjustments reflected on such a statement in accordance with this section by treating references to “reviewed year partner” as “affected partner”. For purposes of this paragraph (e)(3)(iv), an affected partner that is not a pass-through partner takes into account the adjustments in accordance with this section by determining its reporting year based on the date upon which the audited partnership furnished its statements to its reviewed year partners (as described in paragraph (a) of this section). No addition to tax under section 6651 related to any additional reporting year tax will be imposed if an affected partner that is not a pass-through partner reports and pays the additional reporting year tax within 30 days of the extended due date for the return for the adjustment year of the audited partnership (as described in paragraph (e)(3)(ii) of this section).

(v) *Adjustments subject to chapters 3 and 4.* If a pass-through partner furnishes statements to its affected partners in accordance with paragraph (e)(3) of this section, the pass-through partner must comply with the requirements of § 301.6241–7(b)(4), and an affected partner must comply with the requirements of paragraph (f) of this section. For purposes of applying both § 301.6241–7(b)(4) and paragraph (f) of this section, as appropriate, references to the “partnership” should be replaced with references to the “pass-through partner”; references to the “reviewed year partner” should be replaced with references to the “affected partner”; references to the statement required under paragraph (a) of this section and its due date should be replaced with references to the statement required under paragraph (e)(3) of this section and its due date described in paragraph (e)(3)(ii) of this section; references to the “reporting year” should be read in accordance with paragraph (e)(3)(iv) of this section; and references to the partnership return should be read as



references to the return for the adjustment year of the audited partnership as described in paragraph (e)(3)(ii) of this section.

(4) *Pass-through partner pays an imputed underpayment*—(i) *In general.* If a pass-through partner described in paragraph (e)(1) of this section does not furnish statements in accordance with paragraph (e)(3) of this section, the pass-through partner must compute and pay an imputed underpayment determined under paragraph (e)(4)(iii) of this section. The pass-through partner must also pay any penalties, additions to tax, additional amounts, and interest as determined under paragraph (e)(4)(iv) of this section. A failure to timely pay an imputed underpayment required under this paragraph (e)(4) is subject to penalty under section 6651(i).

(ii) *Time of payment.* A pass-through partner must file a partnership adjustment tracking report and compute and pay the imputed underpayment and any penalties, additions to tax, additional amounts, and interest, as described in paragraph (e)(4)(i) of this section, in accordance with forms, instructions, and other guidance no later than the extended due date for the return for the adjustment year of the audited partnership.

(iii) *Computation of the imputed underpayment.* The imputed underpayment under paragraph (e)(4)(i) of this section is computed in the same manner as an imputed underpayment under section 6225 and § 301.6225–1, except that adjustments reflected on the statement furnished to the pass-through partner under § 301.6226–2 are treated as partnership adjustments (as defined in § 301.6241–1(a)(6)) for the first affected year. Any modification approved by the IRS under § 301.6225–2 with respect to the pass-through partner (including any modifications with respect to a relevant partner (as defined in § 301.6225–2(a)) that holds its interest in the audited partnership through its interest in the pass-through partner) reflected on the statement furnished to the pass-through partner under § 301.6226–2 (or paragraph (e)(3) of this section) is taken into account in calculating the imputed underpayment under this paragraph (e)(4)(iii). Any modification that was not approved by the IRS under § 301.6225–2 may not be taken into account in calculating the imputed underpayment under this paragraph (e)(4)(iii).

(iv) *Penalties and interest*—(A) *Penalties.* A pass-through partner must compute and pay any applicable penalties, additions to tax, and additional amounts on the imputed underpayment calculated under

paragraph (e)(4)(iii) of this section as if such amount were an imputed underpayment for the pass-through partner's first affected year. See § 301.6233(a)–1(c).

(B) *Interest.* A pass-through partner must pay interest on the imputed underpayment calculated under paragraph (e)(4)(iii) of this section in accordance with paragraph (c) of this section as if such imputed underpayment were an imputed underpayment due for the first affected year.

(v) *Adjustments that do not result in an imputed underpayment.* Adjustments taken into account under paragraph (e)(4) of this section that do not result in an imputed underpayment (as defined in § 301.6225–1(f)) are taken into account by the pass-through partner in accordance with § 301.6225–3 in the taxable year of the pass-through partner that includes the date the imputed underpayment required under paragraph (e)(4)(i) of this section is paid. If, after making the computation described in paragraph (e)(4)(iii) of this section, no imputed underpayment exists and therefore no payment is required under paragraph (e)(4)(i) of this section, the adjustments that did not result in an imputed underpayment are taken into account by the pass-through partner in accordance with § 301.6225–3 in the taxable year of the pass-through partner that includes the date the statement described in § 301.6226–2 (or paragraph (e)(3) of this section) is furnished to the pass-through partner.

(vi) *Coordination with chapters 3 and 4.* If a pass-through partner pays an imputed underpayment described in paragraph (e)(4)(i) of this section, § 301.6241–7(b)(3) applies to the pass-through partner by substituting “pass-through partner” for “partnership” where § 301.6241–7(b)(3) refers to the partnership that pays the imputed underpayment.

(5) *Treatment of pass-through partners that are not partnerships*—(i) *S corporations.* For purposes of this paragraph (e), an S corporation is treated as a partnership and its shareholders are treated as partners.

(ii) *Trusts and estates.* Except as provided in paragraph (g) of this section, for purposes of paragraph (e) of this section, a trust and its beneficiaries, and an estate and its beneficiaries are treated in the same manner as a partnership and its partners.

(6) *Pass-through partners subject to chapter 1 tax.* A pass-through partner that is subject to tax under chapter 1 of the Code on the adjustments (or a portion of the adjustments) reflected on the statement furnished to such partner

under § 301.6226–2 (or paragraph (e)(3) of this section) takes the adjustments into account under this paragraph (e)(6) when the pass-through partner calculates and pays the additional reporting year tax as determined under paragraph (b) of this section and furnishes statements to its partners in accordance with paragraph (e)(3) of this section. Notwithstanding the prior sentence, a pass-through partner is only required to include on a statement under paragraph (e)(3) of this section the adjustments that would be required to be included on statements furnished to owners or beneficiaries under sections 6037 and 6034A, as applicable, if the pass-through partner had correctly reported the items for the year to which the adjustments relate. If the pass-through partner fails to comply with the requirements of this paragraph (e)(6), the pass-through partner must compute and pay an imputed underpayment, as well as any penalties, additions to tax, additional amounts, and interest with respect to the adjustments reflected on the statement furnished to such partner in accordance with paragraph (e)(4) of this section.

(f) *Partners subject to withholding under chapters 3 and 4.* A reviewed year partner that is subject to withholding under § 301.6241–7(b)(4) must file an income tax return for the reporting year to report its additional reporting year tax and its share of any penalties, additions to tax, additional amounts, and interest (notwithstanding any filing exception in § 1.6012–1(b)(2)(i) or § 1.6012–2(g)(2)(i) of this chapter). The amount of tax paid by a partnership under § 301.6241–7(b)(4) is allowed as a credit under section 33 to the reviewed year partner to the extent that the tax is allocable to the reviewed year partner (within the meaning of § 1.1446–3(d)(2) of this chapter) or is actually withheld from the reviewed year partner (within the meaning of § 1.1464–1(a) or § 1.1474–3 of this chapter). The credit is allowed against the reviewed year partner's income tax liability for its reporting year. The reviewed year partner must substantiate the credit by attaching the applicable Form 1042–S, “Foreign Person's U.S. Source Income Subject to Withholding,” or Form 8805, “Foreign Partner's Information Statement of Section 1446 Withholding Tax,” to its income tax return for the reporting year, as well as satisfying any other requirements prescribed by the IRS in forms and instructions.

(g) *Treatment of disregarded entities and wholly-owned grantor trusts.* In the case of a reviewed year partner that is a wholly-owned entity disregarded as



separate from its owner for Federal tax purposes in the reviewed year or a trust that is wholly owned by only one person in the reviewed year, whether the grantor or another person, and where the trust reports the owner's information to payors under § 1.671-4(b)(2)(i)(A) of this chapter and that is furnished a statement described in § 301.6226-2 (or paragraph (e)(3) of this section), the owner of the disregarded entity or wholly-owned grantor trust must take into account the adjustments reflected on that statement in accordance with this section as if the owner were the reviewed year partner.

(h) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, each partnership is subject to subchapter C of chapter 63 of the Code, each partnership and partner has a calendar year taxable year, no modifications are requested by any partnership under § 301.6225-2 (unless otherwise stated), no penalties, additions to tax, or additional amounts are determined at the partnership level (unless otherwise stated), all persons are U.S. persons (unless otherwise stated), the highest rate of income tax in effect for is 40 percent for all relevant periods, the highest rate of income tax in effect for corporations is 20 percent for all relevant periods, and the highest rate of tax for individuals for capital gains is 15 percent for all relevant periods.

*Example 1.* On its partnership return for the 2020 tax year, Partnership reported ordinary income of \$1,000 and charitable contributions of \$400. On June 1, 2023, the IRS mails a notice of final partnership adjustment (FPA) to Partnership for Partnership's 2020 year disallowing the charitable contribution in its entirety and determining that a 20 percent accuracy-related penalty under section 6662(b) applies to the disallowance of the charitable contribution, and setting forth a single imputed underpayment with respect to such adjustments. Partnership makes a timely election under section 6226 in accordance with § 301.6226-1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and files a timely petition in the Tax Court challenging the partnership adjustments. The Tax Court determines that Partnership is not entitled to any of the claimed \$400 in charitable contributions and upholds the applicability of the penalty. The decision regarding Partnership's 2020 tax year becomes final on December 15, 2025. Pursuant to § 301.6226-2(b), the partnership adjustments are finally determined on December 15, 2025. On February 2, 2026, Partnership files the statements described under § 301.6226-2 with the IRS and furnishes to partner A, an individual who was a partner in Partnership during 2020, a statement described in § 301.6226-2. A had a 25 percent interest in Partnership during all of 2020 and was allocated 25 percent of all items from

Partnership for that year. The statement shows A's share of ordinary income reported on Partnership's return for the reviewed year of \$250 and A's share of the charitable contribution reported on Partnership's return for the reviewed year of \$100. The statement also shows no adjustment to A's share of ordinary income, but does show an adjustment to A's share of the charitable contribution, a reduction of \$100 resulting in \$0 charitable contribution allocated to A from Partnership for 2020. In addition, the statement reports that a 20 percent accuracy-related penalty under section 6662(b) applies. A must pay the additional reporting year tax as determined in accordance with paragraph (b) of this section, in addition to A's penalties and interest. A computes his additional reporting year tax as follows. First, A determines the correction amount for the first affected year (the 2020 taxable year) by taking into account A's share of the partnership adjustment (<100> reduction in charitable contribution) for the 2020 taxable year. A determines the amount by which his chapter 1 tax for 2020 would have increased or decreased if the \$100 adjustment to the charitable contribution from Partnership were taken into account for that year. There is no adjustment to tax attributes in A's intervening years as a result of the adjustment to the charitable contribution for 2020. Therefore, A's aggregate of the correction amounts is the correction amount for 2020, A's first affected year. In addition to the aggregate of the correction amounts being added to the chapter 1 tax that A owes for 2026, the reporting year, A must calculate a 20 percent accuracy-related penalty on A's underpayment attributable to the \$100 adjustment to the charitable contribution, as well as interest on the correction amount for the first affected year and the penalty determined in accordance with paragraph (c) of this section. Interest on the correction amount for the first affected tax year runs from April 15, 2021, the due date of A's 2020 return (the first affected tax year) until A pays this amount. In addition, interest runs on the penalty from April 15, 2021, the due date of A's 2020 return for the first affected year until A pays this amount. On his 2026 income tax return, A must report the additional reporting year tax determined in accordance with paragraph (b) of this section, which is the correction amount for 2020, plus the accuracy-related penalty determined in accordance with paragraph (d) of this section, and interest determined in accordance with paragraph (c) of this section on the correction amount for 2020 and the penalty.

*Example 2.* On its partnership return for the 2020 tax year, Partnership reported an ordinary loss of \$500. On June 1, 2023, the IRS mails an FPA to Partnership for the 2020 taxable year determining that \$300 of the \$500 in ordinary loss should be recharacterized as a long-term capital loss. Partnership has no long-term capital gain for its 2020 tax year. The FPA for Partnership's 2020 tax year reflects an adjustment of an increase in ordinary income of \$300 (as a result of the disallowance of the recharacterization of \$300 from ordinary loss to long-term capital loss) and an imputed underpayment related to that adjustment, as

well as an adjustment of an additional \$300 in long-term capital loss for 2020 which does not result in an imputed underpayment under § 301.6225-1(f). Partnership makes a timely election under section 6226 in accordance with § 301.6226-1 with respect to the imputed underpayment in the FPA and does not file a petition for readjustment under section 6234. Accordingly, under § 301.6226-1(b)(2) and § 301.6225-3(b)(6), the adjustment year partners (as defined in § 301.6241-1(a)(2)) do not take into account the \$300 long-term capital loss that does not result in an imputed underpayment. Rather, the \$300 long-term capital loss is taken into account by the reviewed year partners. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226-2(b), the partnership adjustments become finally determined on August 31, 2023. On September 30, 2023, Partnership files with the IRS statements described in § 301.6226-2 and furnishes statements to all of its reviewed year partners in accordance with § 301.6226-2. One partner of Partnership in 2020, B (an individual), had a 25 percent interest in Partnership during all of 2020 and was allocated 25 percent of all items from Partnership for that year. The statement filed with the IRS and furnished to B shows B's allocable share of the ordinary loss reported on Partnership's return for the 2020 taxable year as \$125. The statement also shows an adjustment to B's allocable share of the ordinary loss in the amount of <\$75>, resulting in a corrected ordinary loss allocated to B of \$50 for taxable year 2020 (\$125 originally allocated to B less \$75 which is B's share of the adjustment to the ordinary loss). In addition, the statement shows an increase to B's share of long-term capital loss in the amount of \$75 (B's share of the adjustment that did not result in the imputed underpayment with respect to Partnership). B must pay the additional reporting year tax as determined in accordance with paragraph (b) of this section. B computes his additional reporting year tax as follows. First, B determines the correction amount for the first affected year (the 2020 taxable year) by taking into account B's share of the partnership adjustments (a \$75 reduction in ordinary loss and an increase of \$75 in long-term capital loss) for the 2020 taxable year. B determines the amount by which his chapter 1 tax for 2020 would have increased or decreased if the \$75 adjustment to ordinary loss and the \$75 adjustment to long-term capital loss from Partnership were taken into account for that year. Second, B determines if there is any increase or decrease in chapter 1 tax for any intervening year as a result of the adjustment to the ordinary and capital losses for 2020. B's aggregate of the correction amounts is the correction amount for 2020, B's first affected year plus any correction amounts for any intervening years. B is also liable for any interest on the correction amount for the first affected year and for any intervening year as determined in accordance with paragraph (c) of this section.

*Example 3.* On its partnership return for the 2020 tax year, Partnership, a domestic partnership, reported U.S. source dividend income of \$2,000. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's

2020 year increasing the amount of U.S. source dividend income to \$4,000 and determining that a 20 percent accuracy-related penalty under section 6662(b) applies to the increase in U.S. source dividend income. Partnership makes a timely election under section 6226 in accordance with § 301.6226-1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226-2(b), the partnership adjustments become finally determined on August 31, 2023. On September 30, 2023, Partnership files the statements described under § 301.6226-2 with the IRS and furnishes to partner C, a nonresident alien individual who was a partner in Partnership during 2020 (and remains a partner in Partnership in 2023), a statement described in § 301.6226-2. C had a 50 percent interest in Partnership during all of 2020 and was allocated 50 percent of all items from Partnership for that year. The statement shows C's share of U.S. source dividend income reported on Partnership's return for the reviewed year of \$1,000 and an adjustment to U.S. source dividend income of \$1,000. In addition, the statement reports that a 20 percent accuracy-related penalty under section 6662(b) applies. Under § 301.6241-7(b)(4)(i), because the additional \$1,000 in U.S. source dividend income allocated to C is an amount subject to withholding (as defined in § 301.6241-7(b)(2)), Partnership must pay the amount of tax required to be withheld on the adjustment. See §§ 1.1441-1(b)(1) and 1.1441-5(b)(2)(i)(A) of this chapter. Under § 301.6241-7(b)(4)(ii), Partnership may reduce the amount of withholding tax it must pay because it has valid documentation from 2020 that establishes that C was entitled to a reduced rate of withholding in 2020 on U.S. source dividend income of 10 percent pursuant to a treaty. Partnership withholds \$100 of tax from C's distributive share, remits the tax to the IRS, and files the necessary return and information returns required by § 1.1461-1 of this chapter. On his 2023 return, C must report the additional reporting year tax determined in accordance with paragraph (b) of this section, the accuracy-related penalty determined in accordance with paragraph (d) of this section, and interest determined in accordance with paragraph (c) of this section on the correction amount for the first affected year, the correction amount for any intervening year, and the penalty. Under paragraph (f) of this section, C may claim the \$100 withholding tax paid by Partnership pursuant to § 301.6241-7(b)(4)(i) as a credit under section 33 against C's income tax liability on his 2023 return.

**Example 4.** On its partnership return for the 2020 tax year, Partnership reported ordinary income of \$100 and a long-term capital gain of \$40. Partnership had four equal partners during the 2020 tax year: E, F, G, and H, all of whom were individuals. On its partnership return for the 2020 tax year, the entire long-term capital gain was allocated to partner E and the ordinary income was allocated to all partners based on

their equal (25 percent) interest in Partnership. The IRS initiates an administrative proceeding with respect to Partnership's 2020 taxable year and determines that the long-term capital gain should have been allocated equally to all four partners and that Partnership should have recognized an additional \$10 in ordinary income. On June 1, 2023, the IRS mails an FPA to Partnership reflecting the reallocation of the \$40 long-term capital gain so that F, G, and H each have \$10 increase in long-term capital gain and E has a \$30 reduction in long-term capital gain for 2020. In addition, the FPA reflects the partnership adjustment increasing ordinary income by \$10. The FPA reflects a general imputed underpayment with respect to the increase in ordinary income and a specific imputed underpayment with respect to the increase in long-term capital gain allocated to F, G, and H. In addition, the FPA reflects a \$30 partnership adjustment that does not result in an imputed underpayment, that is, the reduction of \$30 in long-term capital gain with respect to E that is associated with the specific imputed underpayment in accordance with § 301.6225-1(g)(2)(iii)(B). Partnership makes a timely election under section 6226 in accordance with § 301.6226-1 with respect to the specific imputed underpayment relating to the reallocation of long-term capital gain. Partnership does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226-2(b), the partnership adjustments become finally determined on August 31, 2023. Partnership timely pays and reports the general imputed underpayment relating to the partnership adjustment to ordinary income. On September 30, 2023, Partnership files with the IRS statements described in § 301.6226-2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA that relate to the specific imputed underpayment, that is, the reallocation of long-term capital gain. The statements for F, G, and H each reflect a partnership adjustment of an additional \$10 of long-term capital gain for 2020. The statement for E reflects a partnership adjustment of a reduction of \$30 of long-term capital gain for 2020. All partners must report the additional reporting year tax as determined in accordance with paragraph (b) of this section in the partners' reporting year, which is 2023. They compute their additional reporting year tax as follows. First, they determine the correction amount for the first affected year (the 2020 taxable year) by taking into account their share of the partnership adjustments for the 2020 taxable year. They each determine the amount by which their chapter 1 tax for 2020 would have increased or decreased if the adjustment to long-term capital gain from Partnership were taken into account for that year. Second, they determine if there is any increase or decrease in chapter 1 tax for any intervening year as a result of the adjustment to the long-term capital gain for 2020. Their aggregate of the correction amounts is the sum of the correction amount for 2020, their first affected year and any correction

amounts for any intervening years. They are also liable for any interest on the correction amount for the first affected year and for any intervening year as determined in accordance with paragraph (c) of this section.

**Example 5.** On its partnership return for the 2020 taxable year, Partnership reported a long-term capital loss of \$500. During an administrative proceeding with respect to Partnership's 2020 taxable year, the IRS mails a notice of proposed partnership adjustment (NOPPA) in which it proposes to disallow \$200 of the reported \$500 long-term capital loss, the only adjustment. Accordingly, the imputed underpayment reflected in the NOPPA is \$80 ( $\$200 \times 40$  percent). F, a C corporation partner with a 50 percent interest in Partnership, received 50 percent of all long-term capital losses for 2020. As part of the modification process described in § 301.6225-2(d)(2), F files an amended return for 2020 taking into account F's share of the partnership adjustment (\$100 reduction in long-term capital loss) and pays the tax owed for 2020, including interest. Also as part of the modification process, F also files amended returns for 2021 and 2022 and pays additional tax (and interest) for these years because the reduction in long-term capital loss for 2020 affected the tax due from F for 2021 and 2022. See § 301.6225-2(d)(2). The reduction of the long-term capital loss in 2020 did not affect any other taxable year of F. This is the only modification requested. The IRS approves the modification with respect to F and on June 1, 2023, mails an FPA to Partnership for Partnership's 2020 year reflecting the partnership adjustment reducing the long-term capital loss in the amount of \$200. The FPA also reflects the modification to the imputed underpayment based on the amended returns filed by F taking into account F's share of the reduction in the long-term capital loss. Therefore, the imputed underpayment in the FPA is \$40 ( $\$100 \times 40$  percent). Partnership makes a timely election under section 6226 in accordance with § 301.6226-1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and files a timely petition in the Tax Court challenging the partnership adjustments. The Tax Court upholds the determinations in the FPA and the decision regarding Partnership's 2020 tax year becomes final on December 15, 2025. Pursuant to § 301.6226-2(b), the partnership adjustments are finally determined on December 15, 2025. On February 1, 2026, Partnership files the statements described under § 301.6226-2 with the IRS and furnishes to its partners statements reflecting their shares of the partnership adjustment. The statement issued to F reflects F's share of the partnership adjustment for Partnership's 2020 taxable year as finally determined by the Tax Court. The statement shows F's share of the long-term capital loss adjustment for the reviewed year of \$100, as well as the \$100 long-term capital loss taken into account by F as part of the amended return modification. Accordingly, in accordance with paragraph (b) of this section, when F computes its correction amounts for the first affected year (the 2020 taxable year) and the intervening years (the 2021 through 2026 taxable years), F computes any increase

or decrease in chapter 1 tax for those years using the returns for the 2020, 2021, and 2022 taxable years as amended during the modification process.

*Example 6.* Partnership has two equal partners for the 2020 tax year: I (an individual) and J (a partnership). For the 2020 tax year, J has two equal partners—K and L—both individuals. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year increasing Partnership's ordinary income by \$500,000 and asserting an imputed underpayment of \$200,000. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. Therefore, Partnership's adjustment year is 2023, the due date of the adjustment year return is March 15, 2024 and the extended due date for the adjustment year return is September 16, 2024. On October 12, 2023, Partnership timely files with the IRS statements described in § 301.6226–2 and timely furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to I and J each reflect a partnership adjustment of \$250,000 of ordinary income. I takes its share of the adjustments reflected on the statements furnished by Partnership into account on I's return for the 2023 tax year in accordance with paragraph (b) of this section. On April 1, 2024, J files the adjustment tracking report and files and furnishes statements to K and L reflecting each partner's share of the adjustments reflected on the statements Partnership furnished to J. K and L must take their share of adjustments reflected on the statements furnished by J into account on their returns for the 2023 tax year in accordance with paragraph (b) of this section by treating themselves as reviewed year partners for purposes of that paragraph.

*Example 7.* On its partnership return for the 2020 tax year, Partnership reported that it placed Asset, which had a depreciable basis of \$210,000, into service in 2020 and depreciated Asset over 5 years, using the straight-line method. Accordingly, Partnership claimed depreciation of \$42,000 in each year related to Asset. Partnership has two equal partners for the 2020 tax year: M (a partnership) and N (an S corporation). For the 2020 tax year, N has one shareholder, O, who is an individual. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year. In the FPA, the IRS determines that Asset should have been depreciated over 7 years instead of 5 years and adjusts the depreciation for the 2020 tax year to \$30,000 instead of \$42,000 resulting in a \$12,000 adjustment. This adjustment results in an imputed underpayment of \$4,800 ( $\$12,000 \times 40$  percent). Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a

petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On October 12, 2023, Partnership timely files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to M and N reflect a partnership adjustment of \$6,000 of ordinary income for the 2020 tax year. On February 1, 2024, N takes the adjustments into account under paragraph (e)(3) of this section by filing an adjustment tracking reporting and issuing a statement to O reflecting her share of the adjustments reported to N on the statement it received from Partnership. M does not furnish statements and instead chooses to calculate and pay an imputed underpayment under paragraph (e)(4) of this section equal to \$1,200 ( $\$6,000 \times 40$  percent) on the adjustments reflected on the statement it received from Partnership plus interest on the amount calculated in accordance with paragraph (e)(4)(iv)(B) of this section. On her 2023 return, O properly takes the adjustments into account under this section. Therefore, O reports and pays the additional reporting year tax determined in accordance with paragraph (b) of this section, which is the correction amount for 2020 plus any correction amounts for 2021 and 2022 (if the adjustments in 2020 resulted in any changes to the tax attributes of O in those years), and pays interest determined in accordance with paragraph (c) of this section on the correction amounts for each of those years.

*Example 8.* On its partnership return for the 2020 tax year, Partnership reported \$1,000 of ordinary loss. Partnership has two equal partners for the 2020 tax year: P and Q, both S corporations. For the 2020 tax year, P had one shareholder, R, an individual. For the 2020 tax year, Q had two shareholders, S and T, both individuals. On June 1, 2023, the IRS mails an FPA to Partnership for Partnership's 2020 year determining \$500 of the \$1,000 of ordinary loss should be recharacterized as \$500 of long-term capital loss and \$500 of the ordinary loss should be disallowed. The FPA asserts an imputed underpayment of \$400 ( $\$1,000 \times 40$  percent) with respect to the \$1,000 reduction to ordinary loss and reflecting an adjustment that does not result in an imputed underpayment of a \$500 capital loss. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on August 30, 2023. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on August 31, 2023. On October 12, 2023, Partnership timely files with the IRS statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to P and Q each reflect a partnership adjustment of a \$500 increase in ordinary income and a \$250 increase in

capital loss in accordance with § 301.6225–3(b)(6). P takes the adjustments into account under paragraph (e)(3) of this section by timely filing an adjustment tracking reporting and furnishing a statement to R. Q timely filed an adjustment tracking report but chooses not to furnish statements and instead must calculate and pay an imputed underpayment under paragraph (e)(4) of this section as well as interest on the imputed underpayment determined under paragraph (e)(4)(iv)(B) of this section on the imputed underpayment. After applying the rules set forth in § 301.6225–1, Q calculates the imputed underpayment that it is required to pay of \$200 ( $\$500$  adjustment to ordinary income  $\times 40$  percent). Q also has one adjustment that does not result in an imputed underpayment—the \$250 increase to capital loss. On its 2023 return, Q reports and allocates the \$250 capital loss to its shareholders for its 2023 taxable year as a capital loss as provided in § 301.6225–3. Q must file the adjustment tracking report and pay the amounts due under paragraph (e)(4) of this section no later than September 15, 2024, the extended due date of Partnership's return for the 2023 year, which is the adjustment year.

*Example 9.* On its partnership return for the 2020 tax year, Partnership reported a \$1,000 long-term capital gain on the sale of Stock. Partnership has two equal partners for the 2020 tax year: U (an individual) and V (a partnership). For the 2020 tax year, V has two equal partners: W (an individual) and X (a partnership). For the 2020 tax year, X has two equal partners: Y and Z, both of which are C corporations. On June 1, 2023, the IRS mails a NOPPA to Partnership for Partnership's 2020 year proposing a \$500 increase in the long-term capital gain from the sale of Stock and an imputed underpayment of \$200 ( $\$500 \times 40$  percent). On July 17, 2023, Partnership timely submits a request to modify the rate used in calculating the imputed underpayment under § 301.6225–2(d)(4). Partnership submits sufficient information demonstrating that \$375 of the \$500 adjustment is allocable to individuals (50 percent of the \$500 adjustment allocable to U and 25 percent of the \$500 adjustment allocable to W) and the remaining \$125 is allocable to C corporations (the indirect partners Y and Z). The IRS approves the modification and the imputed underpayment is reduced to \$81.25 ( $(\$375 \times 15$  percent) +  $(\$125 \times 20$  percent)). See § 301.6225–2(b)(3). No other modifications are requested. On February 28, 2024, the IRS mails an FPA to Partnership for Partnership's 2020 year determining a \$500 increase in the long-term capital gain on the sale of Stock and asserting an imputed underpayment of \$81.25 after taking into account the approved modifications. Partnership makes a timely election under section 6226 in accordance with § 301.6226–1 with respect to the imputed underpayment in the FPA for Partnership's 2020 year and does not file a petition for readjustment under section 6234. The time to file a petition expires on May 28, 2024. Pursuant to § 301.6226–2(b), the partnership adjustments become finally determined on May 29, 2024. On July 26, 2024, Partnership timely files with the IRS

statements described in § 301.6226–2 and furnishes statements to its partners reflecting their share of the partnership adjustments as finally determined in the FPA. The statements to U and V each reflect a partnership adjustment of a \$250 increase in long-term capital gain. V timely files the adjustment tracking report but fails to furnish statements and therefore must calculate and pay an imputed underpayment under paragraph (e)(4) of this section as well as interest on the imputed underpayment determined under paragraph (e)(4)(iv)(B) of this section. On February 3, 2025, V pays an imputed underpayment of \$43.75 (( $\$125 \times 20$  percent for the adjustments allocable to X) + ( $\$125 \times 15$  percent for the adjustments allocable to W)) which takes into account the rate modifications approved by the IRS with respect to Y and Z. V must also pay any interest on the amount as determined in accordance with paragraph (e)(4)(iv)(B) of this section. V must file the adjustment tracking report and pay the amounts due under paragraph (e)(4) of this section no later than September 15, 2025, the extended due date of Partnership’s return for the 2024 year, which is the adjustment year.

(i) *Applicability date*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015, and before January 1, 2018, for which a valid election under § 301.9100–22 is in effect.

■ **Par. 15.** Section 301.6226–4 is added to read as follows:

**§ 301.6226–4 Effect of a partnership adjustment on tax attributes of partnerships and their partners.**

(a) *Adjustments to tax attributes*—(1) *In general.* When a partnership adjustment (as defined in § 301.6241–1(a)(6)) is taken into account by the

reviewed year partners (as defined in § 301.6241–1(a)(9)) or affected partners (as described in § 301.6226–3(e)(3)(i)) pursuant to an election made by a partnership under § 301.6226–1, the partnership and its reviewed year partners or affected partners must adjust their tax attributes (as defined in § 301.6241–1(a)(10)) in accordance with the rules in this section.

(2) *Application to pass-through partners and indirect partners.* To the extent a pass-through partner (as defined in § 301.6241–1(a)(5)) pays an imputed underpayment under § 301.6226–3(e)(4)(iii), such pass-through partner and its affected partners or their successors must make adjustments to their tax attributes in accordance with the rules in § 301.6225–4.

(3) *Allocation of partnership adjustments.* Partnership adjustments are allocated to the reviewed year partners or affected partners under § 1.704–1(b)(4)(xiv) of this chapter.

(b) *Adjusting tax attributes of a partnership and its partners when an election under section 6226 is made.* For partnership adjustments that are taken into account by the reviewed year partners or affected partners because an election is made under § 301.6226–1, the partnership adjustments to be taken into account by each partner are determined under § 301.6226–2(f). Accordingly, the reviewed year partners or affected partners must take into account the partnership adjustments as reflected on the statements described in § 301.6226–2 or § 301.6226–3(e)(3) in accordance with § 301.6226–3. The reviewed year partners or affected partners and the partnership adjust partnership tax attributes affected by reason of an adjustment reflected on the

statements described in § 301.6226–2 or § 301.6226–3(e)(3) with respect to the reviewed year (as defined in § 301.6241–1(a)(8)), except to the extent partner or partnership tax attributes were already adjusted as part of the partnership adjustment. Additionally, reviewed year partners or affected partners adjust their partner tax attributes that are affected by the adjustments reflected on the statements described in § 301.6226–2 or § 301.6226–3(e)(3), but these adjustments to partner tax attributes are calculated with respect to each year beginning with the first affected year (as defined in § 301.6226–3(b)(2)(i)), followed by any intervening years (as defined in § 301.6226–3(b)(3)(i)), concluding with the reporting year (as defined in § 301.6226–3(a)).

(c) *Example.* The following example illustrates the rules of this section. For purposes of this example, Partnership is subject to the provisions of subchapter C of chapter 63 of the Internal Revenue Code, Partnership and its partners are calendar year taxpayers, all partners are U.S. persons, and the highest rate of income tax in effect for all taxpayers is 40 percent for all relevant periods.

*Example.* (i) In 2021, J, K and L form Partnership by each contributing \$500 in exchange for partnership interests that share all items of income, gain, loss and deduction in identical shares. Partnership immediately purchases Asset on January 1, 2021 for \$1,500, which it depreciates using the straight-line method with a 10-year recovery period beginning in 2021 (\$150) so that each partner has a \$50 distributive share of the depreciation, resulting in an outside basis of \$450 for each partner. Accordingly, at the end of 2022, J, K and L have an outside basis and capital account of \$400 each (\$500 less \$50 of their respective allocable shares of depreciation in 2021 and \$50 in 2022).

	Partnership basis	Book	Value		Outside basis	Book	Value
Asset .....	\$1200	\$1200	\$1500	J	\$400	\$400	\$500
				K	400	400	500
				L	400	400	500
Totals .....	1200	1200	1500		1200	1200	1500

(ii) The IRS initiates an administrative proceeding with respect to Partnership’s 2021 taxable year (reviewed year) and in 2023 (adjustment year) finally determines that Asset should have been depreciated with a 20-year recovery period beginning in 2021, resulting in a \$75 partnership adjustment that results in an imputed underpayment. The IRS does not initiate an administrative proceeding with respect to Partnership’s 2022 taxable year, and Partnership does not file an administrative adjustment request for that taxable year. Partnership makes an

election under § 301.6226–1 with respect to the imputed underpayment. Therefore, J, K and L each are furnished a statement described in § 301.6226–2 by Partnership reflecting the \$25 income adjustment for 2021.

(iii) Tax attributes of the partners must be adjusted to reflect the \$75 partnership adjustment reflected on the statements described in § 301.6226–2 that is taken into account in equal shares (\$25) by J, K, and L with respect to 2021. Specifically, J, K and L’s outside bases and capital accounts must

be increased \$25 each with respect to the 2021 tax year. As a result, J, K and L each have an outside basis and capital account of \$425 (\$400 plus \$25 of income realized with respect to 2021). Asset’s basis and book value must also be changed in 2023. Thus, after adjusting tax attributes of the partners to take into account the election under § 301.6226–1 and taking into account other activities of Partnership in 2023, accounts are stated as follows:

	Partnership basis	Book	Value		Outside basis	Book	Value
Asset .....	\$1275	\$1275	\$1500	J	\$425	\$425	\$500
	.....	.....	.....	K	425	425	500
	.....	.....	.....	L	425	425	500
Totals .....	1275	1275	1500	.....	1275	1275	1500

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 16.** Section 301.6227–1 is added to read as follows:

**§ 301.6227–1 Administrative adjustment request by partnership.**

(a) *In general.* A partnership may file a request for an administrative adjustment with respect to any partnership-related item (as defined in § 301.6241–6) for any partnership taxable year. When filing an administrative adjustment request (AAR), the partnership must determine whether the adjustments requested in the AAR result in an imputed underpayment in accordance with § 301.6227–2(a) for the reviewed year (as defined in § 301.6241–1(a)(8)). If the adjustments requested in the AAR result in an imputed underpayment, the partnership must take the adjustments into account under the rules described in § 301.6227–2(b) unless the partnership makes an election under § 301.6227–2(c), in which case each reviewed year partner (as defined in § 301.6241–1(a)(9)) must take the adjustments into account in accordance with § 301.6227–3. If the adjustments requested in the AAR do not result in an imputed underpayment (as determined under § 301.6227–2(a)), such adjustments must be taken into account by the reviewed year partners in accordance with § 301.6227–3. A partner may not file an AAR except if the partner is doing so on behalf of the partnership in the partner’s capacity as the partnership representative designated under section 6223. In addition, a partnership may not file an AAR solely for the purpose of changing the designation of a partnership representative or changing the appointment of a designated individual. See § 301.6223–1 (regarding designation of the partnership representative). When the partnership changes the designation

of the partnership representative (or appointment of the designated individual) in conjunction with the filing of an AAR in accordance with § 301.6223–1(e), the change in designation (or appointment) is treated as occurring prior to the filing of the AAR.

(b) *Time for filing an AAR.* An AAR may only be filed by a partnership with respect to a partnership taxable year after a partnership return for that taxable year has been filed with the Internal Revenue Service (IRS). A partnership may not file an AAR with respect to a partnership taxable year more than three years after the later of the date the partnership return for such partnership taxable year was filed or the last day for filing such partnership return (determined without regard to extensions). Except as provided in § 301.6231–1(f), an AAR may not be filed for a partnership taxable year after a notice of administrative proceeding with respect to such taxable year has been mailed by the IRS under section 6231.

(c) *Form and manner for filing an AAR*—(1) *In general.* An AAR, including any required statements, forms, and schedules as described in this section, must be filed with the IRS in accordance with the forms, instructions, and other guidance prescribed by the IRS, and must be signed under penalties of perjury by the partnership representative (as defined in section 6223(a) and the regulations thereunder).

(2) *Contents of AAR filed with the IRS.* A valid AAR filed with the IRS must include—

- (i) The adjustments requested,
- (ii) If a reviewed year partner is required to take into account the adjustments requested under § 301.6227–3, statements described in paragraph (e) of this section, including any transmittal with respect to such statements required by forms, instructions, and other guidance prescribed by the IRS, and
- (iii) Other information prescribed by the IRS in forms, instructions, or other guidance.

(d) *Copy of statement furnished to reviewed year partners in certain cases.* If a reviewed year partner is required to

take into account adjustments requested in an AAR under § 301.6227–3, the partnership must furnish a copy of the statement described in paragraph (e) of this section to the reviewed year partner to whom the statement relates in accordance with the forms, instructions and other guidance prescribed by the IRS. If the partnership mails the statement, it must mail the statement to the current or last address of the reviewed year partner that is known to the partnership. The statement must be furnished to the reviewed year partner on the date the AAR is filed with the IRS.

(e) *Statements*—(1) *Contents.* Each statement described in this paragraph (e) must include the following correct information:

- (i) The name and TIN of the reviewed year partner to whom the statement is being furnished;
- (ii) The current or last address of the partner that is known to the partnership;
- (iii) The reviewed year partner’s share of items as originally reported on statements furnished to the partner under section 6031(b) and, if applicable, section 6227;
- (iv) The reviewed year partner’s share of the adjustments as described under paragraph (c)(2) of this section;
- (v) The date the statement is furnished to the partner;
- (vi) The partnership taxable year to which the adjustments relate; and
- (vii) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(2) *Determination of each partner’s share of adjustments*—(i) *In general.*

Except as provided in paragraphs (e)(2)(ii) and (iii) of this section, each reviewed year partner’s share of the adjustments requested in the AAR is determined in the same manner as each adjusted partnership-related item was originally allocated to the reviewed year partner on the partnership return for the reviewed year.

(ii) *Adjusted partnership-related item not reported on the partnership’s return for the reviewed year.* Except as provided in paragraph (e)(2)(iii) of this section, if the adjusted partnership-related item was not reported on the partnership return for the reviewed year, each reviewed year partner’s share

of the adjustments must be determined in accordance with how such items would have been allocated under rules that apply with respect to partnership allocations, including under the partnership agreement.

(iii) *Allocation adjustments.* If an adjustment involves allocation of a partnership-related item to a specific partner or in a specific manner, including a reallocation of an item, the reviewed year partner's share of the adjustment requested in the AAR is determined in accordance with the AAR.

(f) *Binding nature of AAR.* Filing an AAR as described in paragraph (c) of this section and furnishing statements as described in paragraph (d) of this section are actions of the partnership under section 6223 and the regulations thereunder. Accordingly, unless determined otherwise by the IRS, each partner's share of the adjustments set forth in a statement described in paragraph (e) of this section are binding on the partner pursuant to section 6223. A partner may not treat partnership-related items on the partner's return inconsistently with how those items are treated on the statement that is filed with the IRS under paragraph (c) of this section. See § 301.6222-1(c)(2) (regarding partnership-related items the treatment of which a partner is bound to under section 6223).

(g) *Administrative proceeding for a taxable year for which an AAR is filed.* Within the period described in section 6235 and the regulations thereunder, the IRS may initiate an administrative proceeding with respect to the partnership for any partnership taxable year regardless of whether the partnership filed an AAR with respect to such taxable year and may adjust any partnership-related item, including any partnership-related item adjusted in an AAR filed by the partnership. The amount of an imputed underpayment determined by the partnership under § 301.6227-2(a)(1), including any modifications determined by the partnership under § 301.6227-2(a)(2), may be re-determined by the IRS.

(h) *Notice of change to the amount of creditable foreign tax expenditures.*

[Reserved]

(i) *Applicability date—(1) In general.* Except as provided in paragraph (i)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100-22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par. 17.** Section 301.6227-2 is added to read as follows:

**§ 301.6227-2 Determining and accounting for adjustments requested in an administrative adjustment request by the partnership.**

(a) *Determining whether adjustments result in an imputed underpayment—(1) Determination of the imputed underpayment.* The determination of whether adjustments requested in an administrative adjustment request (AAR) result in an imputed underpayment in the reviewed year (as defined in § 301.6241-1(a)(8)) and the determination of the amount of the imputed underpayment, if any, is made in accordance with the rules under § 301.6225-1.

(2) *Modification of imputed underpayment for purposes of this section.* A partnership may apply modifications to the amount of the imputed underpayment determined under paragraph (a)(1) of this section using only the provisions under § 301.6225-2(d)(3) (regarding tax-exempt partners), § 301.6225-2(d)(4) (regarding modification of applicable tax rate), § 301.6225-2(d)(5) (regarding specified passive activity losses), § 301.6225-2(d)(6)(ii) (regarding limitations or restrictions in the grouping of adjustments), § 301.6225-2(d)(7) (regarding certain qualified investment entities), § 301.6225-2(d)(9) (regarding tax treaty modifications), or as provided in forms, instructions, or other guidance prescribed by the IRS with respect to AARs. The partnership may not modify an imputed underpayment resulting from adjustments requested in an AAR except as described in this paragraph (a)(2). When applying modifications to the amount of an imputed underpayment under this paragraph (a)(2):

(i) The partnership is not required to seek the approval from the Internal Revenue Service (IRS) prior to applying modifications to the amount of any imputed underpayment under paragraph (a)(1) of this section reported on the AAR; and

(ii) As part of the AAR filed with the IRS in accordance with forms, instructions, and other guidance prescribed by the IRS, the partnership must—

(A) Notify the IRS of any modification,

(B) Describe the effect of the modification on the imputed underpayment,

(C) Provide an explanation of the basis for such modification, and

(D) Provide documentation to support the partnership's eligibility for the modification.

(b) *Adjustments resulting in an imputed underpayment taken into account by the partnership—(1) In general.* Except in the case of an election under paragraph (c) of this section, a partnership must pay any imputed underpayment (as determined under paragraph (a) of this section) resulting from the adjustments requested in an AAR on the date the partnership files the AAR. For the rules applicable to the partnership's expenditure for the imputed underpayment, as well as any penalties and interest paid by the partnership with respect to the imputed underpayment, see § 301.6241-4.

(2) *Penalties and interest.* The IRS may impose a penalty, addition to tax, and additional amount with respect to an imputed underpayment determined under this section in accordance with section 6233(a)(3) (penalties determined from the reviewed year). In addition, the IRS may impose a penalty, addition to tax, and additional amount with respect to a failure to pay an imputed underpayment on the date an AAR is filed in accordance with section 6233(b)(3) (penalties with respect to the adjustment year return). Interest on the imputed underpayment is determined under chapter 67 for the period beginning on the date after the due date of the partnership return for the reviewed year (as defined in § 301.6241-1(a)(8)) (determined without regard to extension) and ending on the earlier of the date payment of the imputed underpayment is made, or the due date of the partnership return for the adjustment year (as defined in § 301.6241-1(a)(1)). See section 6233(a)(2). In the case of any failure to pay an imputed underpayment by the due date of the partnership return for the adjustment year, interest is determined in accordance with section 6233(b)(2).

(3) *Coordination with chapters 3 and 4—(i) Coordination when partnership pays an imputed underpayment.* If a partnership pays an imputed underpayment resulting from adjustments requested in an AAR under paragraph (b)(1) of this section, the rules in § 301.6241-7(b)(3) apply to treat the partnership as having paid the amount required to be withheld under chapter 3 or chapter 4 (as defined in § 301.6241-7(b)(2)).

(ii) *Coordination when partnership elects to have adjustments taken into account by reviewed year partners.* If a partnership elects under paragraph (c) of this section to have its reviewed year partners take into account adjustments

requested in an AAR, the rules in § 301.6226-2(g)(3) apply to the partnership, and the rules in § 301.6226-3(f) apply to the reviewed year partners that take into account the adjustments pursuant to § 301.6227-3.

(c) *Election to have adjustments resulting in an imputed underpayment taken into account by reviewed year partners.* In lieu of paying the imputed underpayment under paragraph (b) of this section, the partnership may elect to have each reviewed year partner (as defined in § 301.6241-1(a)(9)) take into account the adjustments requested in the AAR in accordance with § 301.6227-3. A partnership makes an election under this paragraph (c) at the time the AAR is filed in accordance with the forms, instructions, and other guidance prescribed by the IRS. If the partnership makes a valid election in accordance with this paragraph (c), the partnership is not liable for, nor required to pay, the imputed underpayment resulting from the adjustments requested in the AAR. Rather, each reviewed year partner must take into account their share of the adjustments requested in the AAR in accordance with § 301.6227-3. If an election is made under this paragraph (c), modifications applied under paragraph (a)(2) of this section are disregarded and all adjustments requested in the AAR must be taken into account by each reviewed year partner in accordance with § 301.6227-3.

(d) *Adjustments not resulting in an imputed underpayment.* If the adjustments requested in an AAR do not result in an imputed underpayment (as determined under paragraph (a) of this section), the partnership must furnish statements to each reviewed year partner and file such statements with the IRS in accordance with § 301.6227-1. Each reviewed year partner must take into account its share of the adjustments requested in the AAR in accordance with § 301.6227-3.

(e) *Applicability date—(1) In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100-22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par. 18.** Section 301.6227-3 is added to read as follows:

**§ 301.6227-3 Adjustments requested in an administrative adjustment request taken into account by reviewed year partners.**

(a) *In general.* Each reviewed year partner (as defined in § 301.6241-1(a)(9)) is required to take into account its share of adjustments requested in an administrative adjustment request (AAR) if the partnership makes an election under § 301.6227-2(c) with respect to such AAR. In addition, each reviewed year partner must take into account its share of adjustments requested in an AAR that do not result in an imputed underpayment (as defined in § 301.6241-1(a)(3)) as determined under § 301.6227-2(a). Each reviewed year partner receiving a statement furnished in accordance with § 301.6227-1(d) must take into account adjustments reflected in the statement in the reviewed year partner's taxable year that includes the date the statement is furnished (reporting year) in accordance with paragraph (b) of this section.

(b) *Adjustments taken into account by the reviewed year partner in the reporting year—(1) In general.* Except as provided in paragraph (c) of this section, a reviewed year partner that is furnished a statement described in paragraph (a) of this section must treat the statement as if it were issued under section 6226(a)(2) and, on or before the due date for the reporting year must report and pay the additional reporting year tax (as defined in § 301.6226-3(a)), if any, determined after taking into account that partner's share of the adjustments requested in the AAR in accordance with § 301.6226-3. A reviewed year partner may, in accordance with § 301.6226-3(a), reduce chapter 1 tax for the reporting year where the additional reporting year tax is less than zero. For purposes of paragraph (b) of this section, the rule under § 301.6226-3(c)(3) (regarding the increased rate of interest) does not apply. Nothing in this section entitles any partner to a refund of tax imposed by chapter 1 of subtitle A of the Internal Revenue Code (chapter 1 tax) to which such partner is not entitled. For instance, a partnership-partner (as defined in § 301.6241-1(a)(7)) may not claim a refund with respect to its share of any adjustment.

(2) *Examples.* The following examples illustrate the rules of this paragraph (b).

*Example 1.* In 2022, partner A, an individual, received a statement described in paragraph (a) of this section from Partnership with respect to Partnership's 2020 taxable year. Both A and Partnership are calendar year taxpayers and A is not claiming any refundable tax credit in 2020. The only adjustment shown on the statement is an

increase in ordinary loss. Taking into account the adjustment, A determines that his additional reporting year tax for 2022 (the reporting year) is <\$100> (that is, a reduction of \$100.) A's chapter 1 tax for 2022 (without regard to any additional reporting year tax) is \$150. Applying the rules in paragraph (b)(2) of this section, A's chapter 1 tax for 2022 is reduced to \$50 (\$150 chapter 1 tax without regard to the additional reporting year tax plus <\$100> additional reporting year tax).

*Example 2.* The facts are the same as in *Example 1* of this paragraph (b)(2), except A's chapter 1 tax for 2022 (without regard to any additional reporting year tax) is \$75. Applying the rules in paragraph (b)(1) of this section, A's chapter 1 tax for 2022 is reduced by the <\$100> of additional reporting year tax. Accordingly, A's chapter 1 tax for 2022 is \$0 (\$75 chapter 1 tax without regard to any additional reporting year tax plus <\$100> of additional reporting year tax), A owes no chapter 1 tax for 2022, and A may make a claim for refund with respect to the overpayment of \$25.

(c) *Reviewed year partners that are pass-through partners—(1) In general.* Except as provided in this paragraph (c), if a statement described in paragraph (a) of this section (including a statement described in this paragraph (c)(1)) is furnished to a reviewed year partner that is a pass-through partner (as defined in § 301.6241-1(a)(5)), the pass-through partner must take into account the adjustments reflected on that statement in accordance with § 301.6226-3(e) by treating the partnership that filed the AAR as the partnership that made an election under § 301.6226-1. A pass-through partner that furnishes statements in accordance with § 301.6226-3(e)(3) must provide the information described in paragraph (c)(3) of this section in lieu of the information described in § 301.6226-3(e)(3)(iii) on the statements the pass-through partner furnishes to its partners. A pass-through partner that computes and pays an imputed underpayment in accordance with § 301.6226-3(e)(4)(iii) may not apply any modifications to the amount of imputed underpayment. For purposes of this paragraph (c)(1), the statement furnished to the pass-through partner by the partnership filing the AAR is treated as if it were a statement issued under section 6226(a)(2) and described in § 301.6226-2.

(2) *Adjustments that do not result in an imputed underpayment.* If the adjustments requested in an AAR do not result in an imputed underpayment (as described in § 301.6227-2(d)), § 301.6226-3(e)(2) does not apply. The pass-through partner must take into account the adjustments reflected on the statement described in paragraphs (a) or (c)(1) of this section in accordance with § 301.6226-3(e)(3), except that the pass-



through partner must provide the information described in paragraph (c)(3) of this section in lieu of the information described in § 301.6226–3(e)(3)(iii) on the statements the pass-through partner furnishes to its partners.

(3) *Contents of statements.* Each statement described in paragraph (c)(1) or (2) of this section must include the following correct information—

(i) The name and taxpayer identification number (TIN) of the partnership that filed the AAR with respect to the adjustments reflected on the statements described in paragraph (c)(1) of this section;

(ii) The adjustment year (as defined in § 301.6241–1(a)(1)) of the partnership described in paragraph (c)(3)(i) of this section;

(iii) The extended due date for the return for the adjustment year of the partnership described in paragraph (c)(3)(i) of this section (as described in § 301.6226–3(e)(3)(ii));

(iv) The date on which the partnership described in paragraph (c)(3)(i) of this section furnished its statements required under § 301.6227–2(d);

(v) The name and TIN of the partnership that furnished the statement to the pass-through partner if different from the partnership described in paragraph (c)(3)(i) of this section;

(vi) The name and TIN of the pass-through partner;

(vii) The pass-through partner's taxable year to which the adjustments set forth in the statement described in paragraph (c)(1) of this section relate;

(viii) The name and TIN of the affected partner (as defined in § 301.6226–3(e)(3)(i)) to whom the statement is being furnished;

(ix) The current or last address of the affected partner that is known to the pass-through partner;

(x) The affected partner's share of items as originally reported to such partner under section 6031(b) and, if applicable, section 6227, for the taxable year to which the adjustments reflected on the statement furnished to the pass-through partner relate;

(xi) The affected partner's share of partnership adjustments determined under § 301.6227–1(e)(2) as if the affected partner were the reviewed year partner and the partnership were the pass-through partner;

(xii) Any other information required by forms, instructions, and other guidance prescribed by the IRS.

(4) *Affected partners must take into account the adjustments.* A statement furnished to an affected partner in accordance with paragraph (c)(1) or (2) of this section is to be treated by the

affected partner as if it were a statement described in paragraph (a) of this section. The affected partner must take into account its share of the adjustments reflected on such a statement in accordance with this section by treating references to “reviewed year partner” as “affected partner.” When taking into account the adjustments as described in § 301.6226–3(e)(3)(iv), the rules under § 301.6226–3(c)(3) (regarding the increased rate of interest) do not apply.

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 19.** Section 301.6231–1 is added to read as follows:

**§ 301.6231–1 Notice of proceedings and adjustments.**

(a) *Notices to which this section applies.* In the case of any administrative proceeding under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63), including an administrative proceeding with respect to an administrative adjustment request (AAR) filed by a partnership under section 6227, the following notices must be mailed to the partnership and the partnership representative (as described in section 6223 and § 301.6223–1)—

(1) Notice of any administrative proceeding initiated at the partnership level with respect to an adjustment of any partnership-related item (as defined in § 301.6241–6) for any partnership taxable year under subchapter C of chapter 63 (notice of administrative proceeding (NAP));

(2) Notice of any proposed partnership adjustment resulting from an administrative proceeding under subchapter C of chapter 63 (notice of proposed partnership adjustment (NOPPA)); and

(3) Notice of any final partnership adjustment resulting from an administrative proceeding under subchapter C of chapter 63 (notice of final partnership adjustment (FPA)).

(b) *Time for mailing notices*—(1) *Notice of proposed partnership adjustment.* A NOPPA is timely if it is mailed before the expiration of the period for making adjustments under section 6235(a)(1) (including any extensions under section 6235(b) and any special rules under section 6235(c)).

(2) *Notice of final partnership adjustment.* An FPA may not be mailed earlier than 270 days after the date on which the NOPPA is mailed unless the partnership agrees, in writing, with the Internal Revenue Service (IRS) to waive the 270-day period. See § 301.6225–2(c)(3)(iii) for the effect of a waiver under this paragraph (b)(2) on the 270-period for requesting a modification under section 6225(c). See § 301.6232–1(d)(2) for the rules regarding a waiver of the limitations on assessment under § 301.6232–1(c).

(c) *Last known address.* A notice described in paragraph (a) of this section is sufficient if mailed to the last known address of the partnership representative and the partnership (even if the partnership or partnership representative has terminated its existence).

(d) *Notice mailed to partnership representative*—(1) *In general.* A notice described in paragraph (a) of this section will be treated as mailed to the partnership representative if the notice is mailed to the partnership representative that is reflected in the IRS records as of the date the letter is mailed.

(2) *No partnership representative in effect.* In any case in which no partnership representative designation is in effect in accordance with § 301.6223–1(f), a notice described in paragraph (a) of this section mailed to “PARTNERSHIP REPRESENTATIVE” at the last known address of the partnership satisfies the requirements of this section.

(e) *Restrictions on additional FPAs after petition filed.* The IRS may mail more than one FPA to any partnership for any partnership taxable year. However, except in the case of fraud, malfeasance, or misrepresentation of a material fact, the IRS may not mail an FPA to a partnership with respect to a partnership taxable year after the partnership has filed a timely petition for readjustment under section 6234 with respect to an FPA issued with respect to such partnership taxable year.

(f) *Withdrawal of NAP or NOPPA.* The IRS may, without consent of the partnership, withdraw any NAP or NOPPA. A NAP or NOPPA that has been withdrawn by the IRS has no effect for purposes of subchapter C of chapter 63. For instance, if the IRS withdraws a NAP with respect to a partnership taxable year, the prohibition under section 6227(c) on filing an AAR after the mailing of a NAP no longer applies with respect to such taxable year.

(g) *Rescission of FPA.* The IRS may, with the consent of the partnership, rescind any FPA. An FPA that is

rescinded is not an FPA for purposes of subchapter C of chapter 63, and the partnership cannot bring a proceeding under section 6234 with respect to such FPA.

(h) *Applicability date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 20.** Section 301.6232–1 is added to read as follows:

**§ 301.6232–1 Assessment, collection, and payment of imputed underpayment.**

(a) *In general.* An imputed underpayment determined under subchapter C of chapter 63 of the Internal Revenue Code (Code) is assessed and collected in the same manner as if the imputed underpayment were a tax imposed by subtitle A of the Code for the adjustment year (as defined in § 301.6241–1(a)(1)) except that the deficiency procedures under subchapter B of chapter 63 of the Code do not apply to an assessment of an imputed underpayment. Accordingly, no notice under section 6212 is required for, and the restrictions under section 6213 do not apply to, the assessment of any imputed underpayment. See paragraph (c) of this section for limitations on assessment and paragraph (d) of this section for exceptions to restrictions on adjustments.

(b) *Payment of the imputed underpayment.* Upon receipt of notice and demand from the Internal Revenue Service (IRS), an imputed underpayment must be paid by the partnership at the place and time stated in the notice. In the case of an adjustment requested in an administrative adjustment request (AAR) under section 6227(b)(1) that is taken into account by the partnership under § 301.6227–2(b), payment of the imputed underpayment is due on the date the AAR is filed. The IRS may assess the amount of the imputed underpayment reflected on the AAR on the date the AAR is filed. For interest with respect to an imputed underpayment, see § 301.6233(a)–1(b).

(c) *Limitation on assessment*—(1) *In general.* Except as otherwise provided by this section or subtitle F of the Code (except for subchapter B of chapter 63), no assessment of an imputed underpayment may be made (and no levy or proceeding in any court for the collection of an imputed underpayment

may be made, begun, or prosecuted) before—

(i) The close of the 90th day after the day on which a notice of a final partnership adjustment (FPA) under section 6231(a)(3) was mailed; and

(ii) If a petition for readjustment is filed under section 6234 with respect to such FPA, the decision of the court has become final.

(2) *Specified similar amount.* The limitations under paragraph (c)(1) of this section do not apply in the case of a specified similar amount as defined in section 6232(f)(2).

(d) *Exceptions to restrictions on adjustments and assessments*—(1)

*Adjustments treated as mathematical or clerical errors*—(i) *In general.* A notice to a partnership that, on account of a mathematical or clerical error appearing on the partnership return or as a result of a failure by a partnership-partner (as defined in § 301.6241–1(a)(7)) to comply with section 6222(a), the IRS has adjusted or will adjust partnership-related items (as defined in § 301.6241–6) to correct the error or to make the items consistent under section 6222(a) and has assessed or will assess any imputed underpayment (determined in accordance with § 301.6225–1) resulting from the adjustment is not considered an FPA under section 6231(a)(3). A petition for readjustment under section 6234 may not be filed with respect to such notice. The limitations under section 6232(b) and paragraph (c) of this section do not apply to an assessment under this paragraph (d)(1)(i). For the definition of mathematical or clerical error generally, see section 6213(g)(2). For application of mathematical or clerical error in the case of inconsistent treatment by a partner that fails to give notice, see § 301.6222–1(b).

(ii) *Request for abatement*—(A) *In general.* Except as provided in paragraph (d)(1)(ii)(B) of this section, a partnership that is mailed a notice described in paragraph (d)(1)(i) of this section may file with the IRS, within 60 days after the date of such notice, a request for abatement of any assessment of an imputed underpayment specified in such notice. Upon receipt of the request, the IRS must abate the assessment. Any subsequent assessment of an imputed underpayment with respect to which abatement was made is subject to the provisions of subchapter C of chapter 63 of the Code, including the limitations under paragraph (c) of this section.

(B) *Adjustments with respect to inconsistent treatment by a partnership-partner.* If an adjustment that is the subject of a notice described in paragraph (d)(1)(i) of this section is due

to the failure of a partnership-partner to comply with section 6222(a), paragraph (d)(1)(ii)(A) of this section does not apply, and abatement of any assessment specified in such notice is not available. However, prior to assessment, a partnership-partner that has failed to comply with section 6222(a) may correct the inconsistency by filing an administrative adjustment request under section 6227 or filing an amended partnership return and furnishing amended statements, as appropriate.

(iii) *Partnerships that have an election under section 6221(b) in effect.* In the case of a partnership-partner that has an election under section 6221(b) in effect for the reviewed year (as defined in § 301.6241–1(a)(8)), any tax resulting from an adjustment due to the partnership-partner's failure to comply with section 6222(a) may be assessed with respect to the reviewed year partners (as defined in § 301.6241–1(a)(9)) of the partnership-partner (or indirect partners of the partnership-partner, as defined in § 301.6241–1(a)(4)). Such tax may be assessed in the same manner as if the tax were on account of a mathematical or clerical error appearing on the reviewed year partner's or indirect partner's return, except that the procedures under section 6213(b)(2) for requesting an abatement of such assessment do not apply.

(2) *Partnership may waive limitations.* A partnership may at any time by a signed notice in writing filed with the IRS waive the limitations under paragraph (c) of this section (whether or not an FPA under section 6231(a)(3) has been mailed by the IRS at the time of the waiver).

(e) *Limit on amount of imputed underpayment where no proceeding is begun.* If no proceeding under section 6234 is begun with respect to an FPA under section 6231(a)(3) before the close of the 90th day after the day on which such FPA was mailed, the amount for which the partnership is liable under section 6225 with respect to such FPA cannot exceed the amount determined in such FPA.

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 21.** Section 301.6233(a)–1 is added to read as follows:

**§ 301.6233(a)–1 Interest and penalties determined from reviewed year.**

(a) *Interest and penalties with respect to the reviewed year.* Except to the extent provided in section 6226(c) and the regulations thereunder, in the case of a partnership adjustment (as defined in § 301.6241–1(a)(6)) for a reviewed year (as defined in § 301.6241–1(a)(8)), a partnership is liable for—

(1) Interest computed in accordance with paragraph (b) of this section; and

(2) Any penalty, addition to tax, or additional amount as provided under paragraph (c) of this section.

(b) *Computation of interest with respect to partnership adjustments for the reviewed year.* The interest imposed on an imputed underpayment resulting from partnership adjustments for the reviewed year is the interest that would be imposed under chapter 67 of the Internal Revenue Code (Code) if the imputed underpayment were treated as an underpayment of tax for the reviewed year. The interest imposed on an imputed underpayment under this paragraph (b) begins on the day after the due date of the partnership return (without regard to extension) for the reviewed year and ends on the earlier of—

(1) The date prescribed for payment (as described in § 301.6232–1(b));

(2) The due date of the partnership return (without regard to extension) for the adjustment year (as defined in § 301.6241–1(a)(1)); or

(3) The date the imputed underpayment is fully paid.

(c) *Penalties with respect to partnership adjustments for the reviewed year—*(1) *In general.* In accordance with section 6221(a), the applicability of any penalties, additions to tax, and additional amounts that relate to an adjustment to any partnership-related item for the reviewed year is determined at the partnership level as if the partnership had been an individual subject to tax imposed by chapter 1 of subtitle A of the Code for the reviewed year, and the imputed underpayment were an actual underpayment of tax or understatement for such year. Nothing in this paragraph (c)(1) affects the application of any penalty, addition to tax, or additional amount that may apply to the partnership or to any reviewed year partner (as defined in § 301.6241–1(a)(9)) or to any indirect partner (as defined in § 301.6241–1(a)(4)) that is unrelated to an adjustment to a partnership-related item under subchapter C of chapter 63 of the Code. A partner-level defense (as described in § 301.6226–3(d)(3)) may not be raised in a proceeding of the partnership.

(2) *Coordination with accuracy-related and fraud penalty provisions—*

(i) *In general.* In the case of penalties imposed under section 6662, section 6662A, and section 6663 with respect to partnership adjustments in accordance with paragraph (c)(1) of this section, the rules described in paragraphs (c)(2)(ii), (iii), (iv), and (v) of this section apply.

(ii) *Determining the portion of the imputed underpayment to which a penalty applies—*(A) *In general.* In the case of penalties imposed under section 6662, section 6662A, and section 6663, paragraph (c)(2)(ii) of this section applies if—

(1) There is at least one adjustment with respect to which no penalty has been imposed and at least one adjustment with respect to which a penalty has been imposed; or

(2) There are at least two adjustments with respect to which penalties have been imposed and the penalties have different rates.

(B) *Calculating the portion of the imputed underpayment to which the penalty applies.* In computing the portion of an imputed underpayment to which a penalty applies, adjustments that do not result in the imputed underpayment (as described in § 301.6225–1(f)) are not taken into account. The portion of an imputed underpayment to which a penalty applies is calculated as follows—

(1) All the partnership adjustments that resulted in the imputed underpayment are grouped together according to whether they are adjustments with respect to which a penalty has been imposed and, if so, according to rate of penalty. Decreasing adjustments as defined in paragraph (c)(2)(ii)(C) of this section are grouped in accordance with paragraphs (c)(2)(ii)(D) and (E) of this section.

(2) Within each grouping described in paragraph (c)(2)(ii)(B)(1) of this section, multiply the portion of each partnership adjustment that is not an adjustment to a credit or treated as an adjustment to a credit under § 301.6225–1(e)(3)(iii) by the rate that applied to such portion when calculating the imputed underpayment. See §§ 301.6225–1(b)(1)(iv), 301.6225–2(b)(3).

(3) Within each grouping, add the amounts that were calculated under paragraph (c)(2)(ii)(B)(2) of this section.

(4) Within each grouping, increase or decrease the amounts that were calculated under paragraph (c)(2)(ii)(B)(3) of this section by any adjustments to credits (or adjustments treated as adjustments to credits under § 301.6225–1(e)(3)(iii)).

(C) *Decreasing adjustments.* An adjustment to a partnership-related item

that resulted in a decrease to the imputed underpayment is a *decreasing adjustment*.

(D) *Grouping of decreasing adjustments.* Decreasing adjustments are grouped under paragraph (c)(2)(ii)(B)(1) of this section in the following order—

(1) First, decreasing adjustments are grouped with partnership adjustments with respect to which no penalties have been imposed until the amount of the adjustments remaining in this group is zero in accordance with paragraph (c)(2)(ii)(E) of this section;

(2) Second, decreasing adjustments remaining after application of paragraph (c)(2)(ii)(D)(1) of this section (taking into account application of paragraph (c)(2)(ii)(E) of this section) are grouped with partnership adjustments with respect to which a penalty has been imposed at a 20 percent rate;

(3) Third, decreasing adjustments remaining after application of paragraph (c)(2)(ii)(D)(2) of this section (taking into account application of paragraph (c)(2)(ii)(E) of this section) are grouped with partnership adjustments with respect to which a penalty has been imposed at a 30 percent rate;

(4) Fourth, decreasing adjustments remaining after application of paragraph (c)(2)(ii)(D)(3) of this section (taking into account application of paragraph (c)(2)(ii)(E) of this section) are grouped with partnership adjustments with respect to which a penalty has been imposed at a 40 percent rate;

(5) Fifth, decreasing adjustments remaining after application of paragraph (c)(2)(ii)(D)(4) of this section (taking into account application of paragraph (c)(2)(ii)(E) of this section) are grouped with partnership adjustments with respect to which a penalty has been imposed at a 75 percent rate.

(E) *Decreasing adjustments that reduce a grouping to zero.* If, when allocating the decreasing adjustments under paragraph (c)(2)(ii)(D) of this section, the amount calculated in paragraph (c)(2)(ii)(B) of this section for a particular grouping equals zero, any remaining decreasing adjustments (or portion thereof) that would otherwise reduce the amount to less than zero are allocated to the next grouping in sequential order under paragraph (c)(2)(ii)(D) of this section.

(F) *Fraud penalties under section 6663.* If any portion of an imputed underpayment is determined by the IRS to be attributable to fraud, the entire imputed underpayment is treated as attributable to fraud. This paragraph (c)(2)(ii)(F) does not apply to any portion of the imputed underpayment the partnership establishes by a

preponderance of the evidence is not attributable to fraud.

(iii) *Substantial understatement penalty under section 6662(d)*—(A) *In general.* For purposes of application of the penalty under section 6662(d) (substantial understatement of income tax), the imputed underpayment is treated as an understatement under section 6662(d)(2). To determine whether an imputed underpayment treated as an understatement under this paragraph (c)(3)(iii)(A) is a substantial understatement under section 6662(d)(1), the rules of section 6662(d)(1)(A) apply by treating the amount described in paragraph (c)(2)(iii)(B) of this section as the tax required to be shown on the return for the taxable year under section 6662(d)(1)(A)(i).

(B) *Amount of tax required to be shown on the return.* The amount described in this paragraph (c)(2)(iii)(B) is the tax that would result by treating the net income or loss of the partnership for the reviewed year, reflecting any partnership adjustments as finally determined, as taxable income described in section 1(c) (determined without regard to section 1(h)).

(iv) *Reportable transaction understatement under section 6662A.* For purposes of application of the penalty under section 6662A (reportable transaction understatement penalty), the portion of an imputed underpayment attributable to an item described under section 6662A(b)(2) is treated as a reportable transaction understatement under section 6662A(b).

(v) *Reasonable cause and good faith.* For purposes of determining whether a partnership satisfies the reasonable cause and good faith exception under section 6664(c) or (d) with respect to a penalty under section 6662, section 6662A, or section 6663, the partnership is treated as the taxpayer. See § 1.6664-4 of this chapter. Accordingly, the facts and circumstances taken into account to determine whether the partnership has established reasonable cause and good faith are the facts and circumstances applicable to the partnership.

(3) *Examples.* The following examples illustrate the rules of paragraph (c) of this section. For purposes of these examples, each partnership has a calendar taxable year, and the highest tax rate in effect for all taxpayers is 40 percent for all relevant periods.

*Example 1.* One adjustment with respect to which a penalty is imposed. In an administrative proceeding with respect to Partnership's 2018 partnership return, the IRS determines that Partnership understated ordinary income by \$100. The \$100 understatement is due to negligence or

disregard of rules or regulations under section 6662(c), and a 20-percent accuracy-related penalty applies under section 6662(a). The IRS also determines that Partnership understated long-term capital gain by \$300, but no penalty applies with respect to that adjustment. Partnership does not request modification of the imputed underpayment under section 6225 and does not raise any penalty defenses prior to issuance of the notice of final partnership adjustment (FPA). In the FPA, the IRS determines that the imputed underpayment is \$160 ( $(\$100 + \$300) \times 40$  percent). In determining the penalty, the \$100 adjustment (to which the 20-percent penalty relates) is grouped separately from the \$300 adjustment (to which no penalty applies). The portion of the imputed underpayment to which the 20-percent penalty applies is \$40 ( $\$100 \times 40$  percent), and the penalty is \$8 ( $\$40 \times 20$  percent).

*Example 2.* More than one adjustment with respect to which the same rate of penalty is imposed. The facts are the same as in *Example 1* of this paragraph (c)(3), except that the IRS determines that Partnership also overstated its credits by \$10. The overstatement of credits is due to negligence or disregard of rules or regulations under section 6662(c), and a 20-percent accuracy-related penalty applies under section 6662(a). Because the Partnership did not request modification, the imputed underpayment is \$170 ( $(\$100 + \$300) \times 40$  percent) + \$10). In determining the penalty, the \$10 credit adjustment and the \$100 understatement of income, both of which are adjustments with respect to which the 20-percent accuracy-related penalty is imposed, are grouped together. Accordingly, the portion of the imputed underpayment to which the 20-percent accuracy-related penalty applies is \$50 ( $(\$100 \times 40$  percent) + \$10), and the penalty is \$10 ( $\$50 \times 20$  percent).

*Example 3.* Decreasing adjustment. The facts are the same as in *Example 2* of this paragraph (c)(3), except that there is also an adjustment that reduces ordinary income by \$50. In calculating the imputed underpayment under § 301.6225-1 and § 301.6225-2, the partnership demonstrates to the satisfaction of the IRS that the \$50 decrease to ordinary income is appropriately netted with the \$100 increase in ordinary income. Therefore, the \$50 reduction in ordinary income is an adjustment that resulted in the imputed underpayment and therefore a decreasing adjustment described in paragraph (c)(2)(ii)(C) of this section. Because Partnership did not request any further modifications, the imputed underpayment is \$150 ( $(\$100 - \$50) + \$300) \times 40$  percent) + \$10). To determine the portion of the imputed underpayment to which the 20-percent accuracy-related penalty applies, the \$50 reduction to ordinary income is grouped with the \$300 adjustment to long-term capital gain (in accordance with paragraph (c)(2)(ii)(D) of this section). Accordingly, the portion of the imputed underpayment to which the 20-percent accuracy-related penalty applies is \$50 ( $(\$100 \times 40$  percent) + \$10), and the penalty is \$10 ( $\$50 \times 20$  percent).

*Example 4.* Two adjustments with respect to which penalties of different rates have

been imposed. The facts are the same as in *Example 3* of this paragraph (c)(3), except that the \$300 adjustment to long-term capital gain is due to a gross valuation misstatement. A 40-percent accuracy-related penalty under section 6662(a) and (h) applies to the portion of the imputed underpayment attributable to the gross valuation misstatement. The imputed underpayment is \$150 ( $(\$100 - \$50) + \$300) \times 40$  percent) + \$10). Under paragraph (c)(2)(ii)(B) of this section, the adjustment to long-term capital gain (the adjustment to which the 40-percent penalty relates) and the adjustments to ordinary income and credits (the adjustments to which the 20-percent penalty relates) are grouped separately. In accordance with paragraph (c)(2)(ii)(D) of this section, because all partnership adjustments other than the decreasing adjustment are subject to penalties, the \$50 reduction in ordinary income (the decreasing adjustment) is allocated to the grouping of adjustments with respect to which the 20-percent penalty is imposed. The amount described under paragraph (c)(2)(ii)(B) of this section with respect to the 20-percent penalty grouping is \$30 ( $(\$100 \times 40$  percent) -  $(\$50 \times 40$  percent) + \$10). Therefore, the portion of the imputed underpayment to which the 20 percent accuracy-related penalty applies is \$30 and the penalty is \$6 ( $\$30 \times 20$  percent). The portion of the imputed underpayment to which the 40-percent gross valuation misstatement penalty applies is \$120 ( $\$300 \times 40$  percent), and the penalty is \$48 ( $\$120 \times 40$  percent). The accuracy-related penalty under section 6662(a) is \$54.

*Example 5.* Modification with respect to tax-exempt partner. The IRS initiates an administrative proceeding with respect to Partnership's 2019 taxable year. Partnership has four equal partners during its 2019 taxable year: two partners are partnerships, A and B; one partner is a tax-exempt entity, C; and the fourth partner is an individual, D. The IRS timely mails a notice of proposed partnership adjustment (NOPPA) to Partnership for its 2019 taxable year proposing a single partnership adjustment increasing Partnership's ordinary income by \$400,000. The \$400,000 increase in income is due to negligence or disregard of rules or regulations under section 6662(c). A 20-percent accuracy-related penalty under section 6662(a) and (c) applies to the portion of the imputed underpayment attributable to the negligence or disregard of the rules or regulations. In the NOPPA, the IRS determines an imputed underpayment of \$160,000 ( $\$400,000 \times 40$  percent) and that the 20-percent penalty applies to the entire imputed underpayment. The penalty is \$32,000 ( $\$160,000 \times 20$  percent). Partnership requests modification under § 301.6225-2(d)(3) (regarding tax-exempt partners) with respect to the amount of additional income allocated to C, and the IRS approves the request. After modification of the imputed underpayment, the imputed underpayment is \$120,000 ( $(\$400,000 - \$100,000) \times 40$  percent), and the penalty is \$24,000 ( $\$120,000 \times 20$  percent).

*Example 6.* Amended return modification. The facts are the same as in *Example 5* of this paragraph (c)(3), except in addition to the

modification with respect to C's tax-exempt status, Partnership requests a modification under § 301.6225-2(d)(2) (regarding amended returns) with respect to the \$100,000 of additional income allocated to D. In accordance with the rules under § 301.6225-2(d)(2), D files an amended return for D's 2019 taxable year taking into account \$100,000 of additional ordinary income. In addition, in accordance with § 301.6225-2(d)(2)(viii), D takes into account on D's return the 20-percent accuracy-related penalty for negligence or disregard of rules or regulations that relates to the ordinary income adjustment. D's tax attributes for other taxable years are not affected. The IRS approves the modification. As a result, Partnership's total netted partnership adjustment under § 301.6225-1(b)(2) is \$200,000 (\$400,000 less \$100,000 allocable to C and \$100,000 taken into account by D). The imputed underpayment, after modification, is \$80,000 (\$200,000 × 40 percent), and the penalty is \$16,000 (\$80,000 × 20 percent).

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100-22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par. 22.** Section 301.6233(b)-1 is added to read as follows:

**§ 301.6233(b)-1 Interest and penalties with respect to the adjustment year return.**

(a) *Interest and penalties with respect to failure to pay imputed underpayment on the date prescribed.* In the case of any failure to pay an imputed underpayment on the date prescribed for such payment (as described in § 301.6232-1(b)), a partnership is liable for—

(1) Interest as determined under paragraph (c) of this section; and

(2) Any penalty, addition to tax, or additional amount as determined under paragraph (d) of this section.

(b) *Imputed underpayments to which this section applies.* This section applies to the portion of an imputed underpayment determined by the IRS under section 6225(a)(1), or an imputed underpayment resulting from adjustments requested by a partnership in an administrative adjustment request under section 6227, that is not paid by the date prescribed for payment under § 301.6232-1(b).

(c) *Interest.* Interest determined under this paragraph (c) is the interest that would be imposed under chapter 67 of the Internal Revenue Code (Code) by treating any unpaid amount of the imputed underpayment as an underpayment of tax imposed for the

adjustment year (as defined in § 301.6241-1(a)(1)). The interest under this paragraph (c) begins on the date prescribed for payment (as described in § 301.6232-1(b)) and ends on the date payment of the imputed underpayment is made.

(d) *Penalties.* If a partnership fails to pay an imputed underpayment by the date prescribed for payment (as described in § 301.6232-1(b)), section 6651(a)(2) applies to such failure, and any unpaid amount of the imputed underpayment is treated as if it were an underpayment of tax for purposes of part II of subchapter A of chapter 68 of the Code. For purposes of this section, the penalty under 6651(a)(2) is applied by treating the unpaid amount of the imputed underpayment as the unpaid amount shown as tax on a return required under subchapter A of chapter 61 of the Code.

(e) *Applicability date*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100-22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par. 23.** Section 301.6234-1 is added to read as follows:

**§ 301.6234-1 Judicial review of partnership adjustment.**

(a) *In general.* Within 90 days after the date on which a notice of a final partnership adjustment (FPA) under section 6231(a)(3) with respect to any partnership taxable year is mailed, a partnership may file a petition for a readjustment of any partnership adjustment (as defined in § 301.6241-1(a)(6)) reflected in the FPA for such taxable year (without regard to whether an election under section 6226 has been made with respect to any imputed underpayment (as defined in § 301.6241-1(a)(3)) reflected in such FPA) with—

(1) The Tax Court;

(2) The district court of the United States for the district in which the partnership's principal place of business is located; or

(3) The Court of Federal Claims.

(b) *Jurisdictional requirement for bringing action in district court or Court of Federal Claims.* A petition for readjustment under this section with respect to any partnership adjustment may be filed in a district court of the United States or the Court of Federal Claims only if the partnership filing the petition deposits with the Internal

Revenue Service (IRS), on or before the date the petition is filed, the amount of (as of the date of the filing of the petition) any imputed underpayment (as shown on the FPA) and any penalties, additions to tax, and additional amounts with respect to such imputed underpayment. If there is more than one imputed underpayment reflected in the FPA, the partnership must deposit the amount of each imputed underpayment to which the petition for readjustment relates and the amount of any penalties, additions to tax, and additional amounts with respect to each such imputed underpayment.

(c) *Treatment of deposit as payment of tax.* Any amount deposited in accordance with paragraph (b) of this section, while deposited, will not be treated as a payment of tax for purposes of the Internal Revenue Code (Code). Notwithstanding the preceding sentence, an amount deposited in accordance with paragraph (b) of this section will be treated as a payment of tax for purposes of chapter 67 of the Code (relating to interest). Interest will be allowed and paid in accordance with section 6611.

(d) *Effect of decision dismissing action.* If an action brought under this section is dismissed other than by reason of a rescission of the FPA under section 6231(d) and § 301.6231-1(g), the decision of the court dismissing the action is considered as its decision that the FPA is correct.

(e) *Amount deposited may be applied against assessment.* If the limitations on assessment under section 6232(b) and § 301.6232-1(c) no longer apply with respect to an imputed underpayment for which a deposit under paragraph (b) of this section was made, the IRS may apply the amount deposited against any such imputed underpayment that is assessed.

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100-22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par. 24.** Section 301.6235-1 is added to read as follows:

**§ 301.6235-1 Period of limitations on making adjustments.**

(a) *In general.* Except as provided in section 6235(c), section 905(c) or paragraph (b) of this section (regarding extensions), no partnership adjustment (as defined in § 301.6241-1(a)(6)) for

any partnership taxable year may be made after the later of the date that is—

- (1) Three years after the latest of—
  - (i) The date on which the partnership return for such taxable year was filed;
  - (ii) The return due date (as defined in section 6241(3)) for the taxable year; or
  - (iii) The date on which the partnership filed an administrative adjustment request with respect to such taxable year under section 6227; or
- (2) The date described in paragraph (b) of this section with respect to a request for modification; or
- (3) The date described in paragraph (c) of this section with respect to a notice of proposed partnership adjustment.

(b) *Modification requested under section 6225(c)*—(1) *In general.* For purposes of paragraph (a)(2) of this section, in the case of any request for modification of any imputed underpayment under section 6225(c), the date by which the Internal Revenue Service (IRS) may make a partnership adjustment is the date that is 270 days (plus the number of days of an extension of the period for requesting modification (as described in § 301.6225–2(c)(3)(i)) agreed to by the IRS under section 6225(c)(7) and § 301.6225–2(c)(3)(ii)) after the date on which everything required to be submitted to the IRS pursuant to section 6225(c) is so submitted.

(2) *Date on which everything is required to be submitted*—(i) *In general.* For purposes of paragraph (b)(1) of this section, the date on which everything required to be submitted to the IRS pursuant to section 6225(c) is so submitted is the earlier of—

(A) The date the period for requesting modification ends (including extensions) as described in § 301.6225–2(c)(3)(i) and (ii); or

(B) The date the period for requesting modification expires as a result of a waiver of the prohibition on mailing a notice of final partnership adjustment (FPA) under § 301.6231–1(b)(2). See § 301.6225–2(c)(3)(iii).

(ii) *Incomplete submission has no effect.* A determination by the IRS that the information submitted as part of a request for modification is incomplete has no effect on the applicability of paragraph (b)(2) of this section.

(c) *Notice of proposed partnership adjustment.* For purposes of paragraph (a)(3) of this section, the date by which the IRS may make a partnership adjustment is the date that is 330 days (plus the number of days of an extension of the modification period (as described in § 301.6225–2(c)(3)(i)) agreed to by the IRS under section

6225(c)(7) and § 301.6225–2(c)(3)(ii)) after the date the last notice of proposed partnership adjustment (NOPPA) under section 6231(a)(2) is mailed, regardless of whether modification is requested by the partnership under section 6225(c).

(d) *Extension by agreement.* The periods described in paragraphs (a), (b), and (c) of this section (including any extension of those periods pursuant to this paragraph (d)) may be extended by an agreement, in writing, entered into by the partnership and the IRS before the expiration of such period.

(e) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, each partnership has a calendar taxable year.

*Example 1.* Partnership timely files its partnership return for the 2020 taxable year on March 1, 2021. On September 1, 2023, Partnership files an administrative adjustment request (AAR) under section 6227 with respect to its 2020 taxable year. As of September 1, 2023, the IRS has not initiated an administrative proceeding under subchapter C of chapter 63 of the Internal Revenue Code with respect to Partnership's 2020 taxable year. Therefore, as of September 1, 2023, under paragraph (a)(1) of this section, the period for making partnership adjustments with respect to Partnership's 2020 taxable year expires on September 1, 2026.

*Example 2.* Partnership timely files its partnership return for the 2020 taxable year on the due date, March 15, 2021. On February 1, 2023, the IRS mails to Partnership and the partnership representative of Partnership (PR) a notice of administrative proceeding under section 6231(a)(1) with respect to Partnership's 2020 taxable year. Assuming no AAR has been filed with respect to Partnership's 2020 taxable year and the IRS has not yet mailed a NOPPA under section 6231(a)(2) with respect to Partnership's 2020 taxable year, the period for making partnership adjustments for Partnership's 2020 taxable year expires on the date determined under paragraph (a)(1) of this section, March 15, 2024.

*Example 3.* The facts are the same as in *Example 2* of this paragraph (e), except that on June 1, 2023, pursuant to § 301.6235–1(d), PR signs an agreement extending the period for making partnership adjustments under section 6235(a)(1) for Partnership's 2020 taxable year to December 31, 2025. In addition, on June 2, 2025, the IRS mails to Partnership and PR a timely NOPPA under section 6231(a)(2). Pursuant to § 301.6225–2(c)(3)(i), the period for requesting modification expires on February 27, 2026 (270 days after June 2, 2025, the date the NOPPA is mailed), but PR does not submit a request for modification on or before this date. Under paragraph (c) of this section, the date for purposes of paragraph (a)(3) of this section is April 28, 2026, the date that is 330 days from the mailing of the NOPPA. Because April 28, 2026 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under

paragraph (d) of this section), and because no modification was requested, paragraph (a)(2) of this section is not applicable. April 28, 2026 is the date on which the period for making partnership adjustments expires under section 6235.

*Example 4.* The facts are the same as in *Example 3* of this paragraph (e), except that PR notifies the IRS that Partnership will be requesting modification. On January 5, 2026, PR and the IRS agree to extend the period for requesting modification pursuant to section 6225(c)(7) and § 301.6225–2(c)(3)(ii) for 45 days—from February 27, 2026 to April 13, 2026. PR submits the request for modification to the IRS on April 13, 2026. Therefore, the date determined under paragraph (b) of this section is February 22, 2027, which is 270 days after the date everything required to be submitted was so submitted pursuant to paragraph (b)(2) of this section plus the additional 45-day extension of the period for requesting modification agreed to by PR and the IRS. Because February 22, 2027 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section) and the date under paragraph (a)(3) of this section (June 12, 2026, which is 330 days from the date the NOPPA was mailed plus the 45-day extension under section 6225(c)(7)), February 22, 2027 is the date on which the period for making partnership adjustments expires under section 6235.

*Example 5.* The facts are the same as in *Example 4* of this paragraph (e), except that PR does not request an extension of the period for requesting modification. On February 1, 2026, PR submits a request for modification and PR, and the IRS agree in writing to waive the prohibition on mailing an FPA pursuant to § 301.6231–1(b)(2). Pursuant to § 301.6225–2(c)(3)(iii), the period for requesting modification expires as of February 1, 2026, rather than February 27, 2026. Accordingly, under paragraph (b)(2) of this section, the date on which everything required to be submitted pursuant to section 6225(c) is so submitted is February 1, 2026, and the 270-day period described in paragraph (b)(1) of this section begins to run on that date. Therefore, the date for purposes of paragraph (a)(2) of this section is October 29, 2026, which is 270 days after February 1, 2026, the date on which everything required to be submitted under section 6225(c) is so submitted. Because October 29, 2026 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section) and the date under paragraph (a)(3) of this section (April 28, 2026), October 29, 2026 is the date on which the period for making partnership adjustments expires under section 6235.

*Example 6.* The facts are the same as in *Example 5* of this paragraph (e), except PR completes its submission of information to support a request for modification on July 1, 2025, but does not execute a waiver pursuant to § 301.6231–1(b)(2). Therefore, pursuant to paragraph (b)(2) of this section, February 26, 2026, the date the period requesting modification expires, is the date on which everything required to be submitted pursuant to section 6225(c) is so submitted. As a result, the 270-day period described in



paragraph (b)(1) of this section expires on November 23, 2026. Because November 23, 2026 is later than the date under paragraph (a)(1) of this section (December 31, 2025, as extended under paragraph (d) of this section) and the date under paragraph (a)(3) of this section (April 28, 2026), November 23, 2026 is the date on which the period for making partnership adjustments expires under section 6235.

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 25.** Section 301.6241–1 is added to read as follows:

**§ 301.6241–1 Definitions.**

(a) *Definitions.* For purposes of subchapter C of chapter 63 of the Internal Revenue Code—

(1) *Adjustment year.* The term *adjustment year* means the partnership taxable year in which—

(i) In the case of an adjustment pursuant to the decision of a court in a proceeding brought under section 6234, such decision becomes final;

(ii) In the case of an administrative adjustment request (AAR) under section 6227, such AAR is filed; or

(iii) In any other case, a notice of final partnership adjustment is mailed under section 6231 or, if the partnership waives the restrictions under section 6232(b) (regarding limitations on assessment), the waiver is executed by the IRS.

(2) *Adjustment year partner.* The term *adjustment year partner* means any person who held an interest in a partnership at any time during the adjustment year.

(3) *Imputed underpayment.* Except as otherwise provided in this paragraph (a)(3), the term *imputed underpayment* means the amount determined in accordance with section 6225 and the regulations thereunder. In the case of an election under section 6226, the term *imputed underpayment* means the amount determined in accordance with § 301.6226–3(e)(4). In the case of an administrative adjustment request, the term *imputed underpayment* means the amount determined in accordance with § 301.6227–2 or § 301.6227–3(c).

(4) *Indirect partner.* The term *indirect partner* means any person who has an interest in a partnership through their interest in one or more pass-through partners (as defined in paragraph (a)(5)

of this section) or through a wholly-owned entity disregarded as separate from its owner for Federal tax purposes.

(5) *Pass-through partner.* The term *pass-through partner* means a pass-through entity that holds an interest in a partnership. A pass-through entity is a partnership as described in § 301.7701–2(c)(1) (including a foreign entity that is classified as a partnership under § 301.7701–3(b)(2)(i)(A) or (c)), an S corporation, a trust (other than a wholly-owned trust disregarded as separate from its owner for Federal tax purposes), and a decedent's estate. For purposes of this paragraph (a)(5), a pass-through entity is not a wholly-owned entity disregarded as separate from its owner for Federal tax purposes.

(6) *Partnership adjustment.* The term *partnership adjustment* means any adjustment to a partnership-related item (as defined in § 301.6241–6) and includes any portion of a partnership adjustment.

(7) *Partnership-partner.* The term *partnership-partner* means a partnership that holds an interest in another partnership.

(8) *Reviewed year.* The term *reviewed year* means the partnership taxable year to which a partnership adjustment relates.

(9) *Reviewed year partner.* The term *reviewed year partner* means any person who held an interest in a partnership at any time during the reviewed year.

(10) *Tax attribute.* A tax attribute is anything that can affect the amount or timing of a partnership-related item (as defined in § 301.6241–6) or that can affect the amount of tax due in any taxable year. Examples of tax attributes include, but are not limited to, basis and holding period, as well as the character of items of income, gain, loss, deduction, or credit and carryovers and carrybacks of such items.

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 26.** Section 301.6241–2 is added to read as follows:

**§ 301.6241–2 Bankruptcy of the partnership.**

(a) *Coordination between Title 11 and proceedings under subchapter C of chapter 63*—(1) *In general.* If a partnership is a debtor in a case under Title 11 of the United States Code (Title

11 case), the running of any period of limitations under section 6235 with respect to the time for making a partnership adjustment (as defined in § 301.6241–1(a)(6)) and under sections 6501 and 6502 with respect to the assessment or collection of any imputed underpayment (as defined in § 301.6241–1(a)(3)) determined under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) is suspended during the period the Internal Revenue Service (IRS) is prohibited by reason of the Title 11 case from making the adjustment, assessment, or collection until—

(i) 60 days after the suspension ends, for adjustments or assessments, and

(ii) 6 months after the suspension ends, for collection.

(2) *Interaction with section 6232(b).* The filing of a proof of claim or request for payment (or the taking of any other action) in a Title 11 case is not be treated as an action prohibited by section 6232(b) (regarding limitations on assessment).

(3) *Suspension of the time for judicial review.* In a Title 11 case, the running of the period specified in section 6234 (regarding judicial review of partnership adjustments) is suspended during the period during which the partnership is prohibited by reason of the Title 11 case from filing a petition under section 6234, and for 60 days thereafter.

(4) *Actions not prohibited.* The filing of a petition under Title 11 does not prohibit the following actions:

(i) An administrative proceeding with respect to a partnership under subchapter C of chapter 63;

(ii) The mailing of any notice with respect to a proceeding with respect to a partnership under subchapter C of chapter 63, including:

(A) A notice of administrative proceeding;

(B) A notice of proposed partnership adjustment; and

(C) A notice of final partnership adjustment;

(iii) A demand for tax returns;

(iv) The assessment of any tax, including the assessment of any imputed underpayment with respect to a partnership; and

(v) The issuance of notice and demand for payment of an assessment under subchapter C of chapter 63 (but see section 362(b)(9)(D) of Title 11 of the United States Code regarding the timing of when a tax lien takes effect by reason of such assessment).

(b) *Applicability date*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.



(2) *Election under § 301.9100-22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100-22 is in effect.

■ **Par. 27.** Section 301.6241-3 is added to read as follows:

**§ 301.6241-3 Treatment where a partnership ceases to exist.**

(a) *Former partners take adjustments into account—(1) In general.* Except as described in paragraphs (a)(2) and (3) of this section, if the Internal Revenue Service (IRS) determines that any partnership (including a partnership-partner as defined in § 301.6241-1(a)(7)) ceases to exist (as defined in paragraph (b)(2) of this section) before any partnership adjustment (as defined in § 301.6241-1(a)(6)) under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) takes effect (as described in paragraph (c) of this section), the partnership adjustment is taken into account by the former partners (as described in paragraph (d) of this section) of the partnership in accordance with paragraph (e) of this section.

(2) *Partnership no longer liable for any unpaid amounts resulting from a partnership adjustment.* A partnership that ceases to exist is no longer liable for any unpaid amounts resulting from a partnership adjustment required to be taken into account by a former partner under this section.

(3) *Application of this section to partnership-partners.* This section applies to a partnership-partner and its former partners, regardless of whether the partnership-partner has an election under section 6221(b) in effect for any relevant partnership taxable year.

(b) *Determination that partnership ceases to exist—(1) In general.* For purposes of this section, the IRS may, in its sole discretion, make a determination that a partnership ceases to exist for purposes of this section, but the IRS is not required to do so even if the definition in paragraph (b)(2) of this section applies with respect to such partnership. If the IRS determines that a partnership ceases to exist, the IRS will notify the partnership and the former partners (as defined in paragraph (d) of this section), in writing, within 30 days of such determination using the last known address of the partnership and the former partners.

(2) *Cease to exist defined—(i) In general.* The IRS may determine that a partnership ceases to exist if the partnership terminates within the meaning of section 708(b)(1), or does not have the ability to pay, in full, any

amount due under the provisions of subchapter C of chapter 63 for which the partnership is or becomes liable. For purposes of this section, a partnership does not have the ability to pay if the IRS determines that the amount due with respect to the partnership is not collectible based on the information the IRS has at the time of such determination. For purposes of this section, a partnership does not cease to exist solely because the partnership has—

(A) A valid election under section 6226 and the regulations thereunder in effect with respect to any imputed underpayment (as defined in § 301.6241-1(a)(3));

(B) Received a statement under section 6226(a)(2) (or § 301.6226-3(e)) and has furnished statements to its partners in accordance with § 301.6226-3(e)(3); or

(C) Not paid any amount required to be paid under subchapter C of chapter 63.

(ii) *Year in which a partnership ceases to exist.* If a partnership terminates under section 708(b)(1), the partnership ceases to exist on the last day of the partnership's final taxable year. If a partnership does not have the ability to pay, the partnership ceases to exist on the date that the IRS makes a determination under paragraph (b)(2)(i) of this section that the partnership ceases to exist.

(iii) *Limitation on IRS determination that partnership ceases to exist.* In no event may the IRS determine that a partnership ceases to exist with respect to a partnership adjustment after the expiration of the period of limitations on collection applicable to the assessment made against the partnership for the amount due resulting from such adjustment.

(c) *Partnership adjustment takes effect—(1) Full payment of amounts resulting from a partnership adjustment.* For purposes of this section, a partnership adjustment under subchapter C of chapter 63 takes effect when there is full payment of amounts resulting from a partnership adjustment. For purposes of this section, *full payment of amounts resulting from a partnership adjustment* means all amounts due under subchapter C of chapter 63 resulting from the partnership adjustment are fully paid by the partnership.

(2) *Partial payment of amount due by the partnership.* If a partnership pays part, but not all, of any amount due resulting from a partnership adjustment before the partnership ceases to exist, the former partners (as defined in paragraph (d) of this section) of the

partnership that has ceased to exist are not required to take into account any partnership adjustment to the extent amounts have been paid by the partnership with respect to such adjustment. The notification that the IRS has determined that the partnership has ceased to exist will include information regarding the portion of the partnership adjustments with respect to which appropriate amounts have not already been paid by the partnership and therefore must be taken into account by the former partners (described in paragraph (d) of this section) in accordance with paragraph (e) of this section.

(d) *Former partners—(1) Adjustment year partners—(i) In general.* Except as described in paragraphs (d)(1)(ii) and (d)(2) of this section, the term *former partners* means the adjustment year partners (as defined in § 301.6241-1(a)(2)) of a partnership that ceases to exist for the partnership taxable year to which the partnership adjustment relates.

(ii) *Partnership-partner ceases to exist.* If the adjustment year partner is a partnership-partner that the IRS has determined ceased to exist, the partners of such partnership-partner during the partnership-partner's taxable year that includes the end of the adjustment year (as defined in § 301.6241-1(a)(1)) of the partnership that is subject to a proceeding under subchapter C of chapter 63 are the former partners for purposes of this section. If the partnership-partner ceased to exist before the partnership-partner's taxable year that includes the end of the adjustment year of the partnership that is subject to a proceeding under subchapter C of chapter 63, the former partners for purposes of this section are the partners of such partnership-partner during the partnership taxable year for which the final partnership return of the partnership-partner under section 6031 is filed.

(2) *No adjustment year partners.* If there are no adjustment year partners of a partnership that ceases to exist, the term *former partners* means the partners of the partnership during the last taxable year for which a partnership return under section 6031 was filed with respect to such partnership. For instance, if a partnership terminates under section 708(b)(1) (and therefore ceases to exist under paragraph (b)(2)(i) of this section) before the adjustment year and files a final partnership return for the partnership taxable year of such partnership, the former partners for purposes of this section are the partners of the partnership during the

partnership taxable year for which a final partnership return is filed.

(e) *Taking adjustments into account—(1) In general.* For purposes of paragraph (a) of this section, a former partner of a partnership that ceases to exist takes a partnership adjustment into account as if the partnership had made an election under section 6226 and the regulations thereunder (regarding the alternative to payment of the imputed underpayment). A former partner must take into account the former partner's share of a partnership adjustment as set forth in the statement described in paragraph (e)(2) of this section in accordance with § 301.6226–3.

(2) *Statements furnished to former partners.* If a partnership is notified by the IRS that the partnership has ceased to exist as described in paragraph (b)(1) of this section, the partnership must furnish to each former partner a statement reflecting such former partner's share of the partnership adjustment required to be taken into account under this section and file a copy of such statement with the IRS in accordance with the rules under § 301.6226–2, except that—

(i) The adjustments are taken into account by the applicable former partner (as described in paragraph (d) of this section), rather than the reviewed year partners (as defined in § 301.6241–1(a)(9)), and

(ii) The partnership must furnish statements to the former partners and file the statements with the IRS no later than 30 days after the date of the notification to the partnership that the IRS has determined that the partnership has ceased to exist.

(3) *Authority to issue statements.* If any statements required by paragraph (e) of this section are not timely furnished to a former partner and filed with the IRS in accordance with paragraph (e)(2)(ii) of this section, the IRS may notify the former partner in writing of such partner's share of the partnership adjustments based on the information reasonably available to the IRS at the time such notification is provided. For purposes of paragraph (e) of this section, a notification to a former partner under this paragraph (e)(3) is treated the same as a statement required to be furnished and filed under paragraph (e)(2) of this section.

(f) *Examples.* The following examples illustrate the provisions of this section. For purposes of the examples, all partnerships and partners are calendar year taxpayers and each partnership is subject to the provisions of subchapter C of chapter 63 of the Code (unless otherwise stated).

*Example 1.* The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of Partnership. During 2023, in accordance with section 6235(b), Partnership extends the period of limitations on adjustments under section 6235(a) until December 31, 2025. On February 1, 2025, the IRS mails Partnership a notice of final partnership adjustment (FPA) that determines partnership adjustments that result in a single imputed underpayment. Partnership does not timely file a petition under section 6234 and does not make a valid election under section 6226. On June 2, 2025, the IRS mails Partnership notice and demand for payment of the amount due resulting from the adjustments determined in the FPA. Partnership fails to make a payment. On September 1, 2029, the IRS determines Partnership ceases to exist for purposes of this section because the IRS has determined that Partnership does not have the ability to pay under paragraph (b)(2)(i) of this section. Under § 301.6241–1(a)(1), the adjustment year is 2025 and A and B, both individuals, are the only adjustment year partners of Partnership during 2025. Accordingly, under paragraph (d)(1) of this section, A and B are former partners. Therefore, A and B are required to take their share of the partnership adjustments determined in the FPA into account under paragraph (e) of this section.

*Example 2.* The IRS initiates a proceeding under subchapter C of chapter 63 with respect to the 2020 partnership taxable year of P, a partnership. G, a partnership that has an election under section 6221(b) in effect for the 2020 taxable year, is a partner of P during 2020 and for every year thereafter. On February 3, 2025, the IRS mails P an FPA that determines partnership adjustments that result in a single imputed underpayment. P does not timely file a petition under section 6234 and does not make a timely election under section 6226. On May 6, 2025, the IRS mails P notice and demand for payment of the amount due resulting from the adjustments determined in the FPA. P does not make a payment. On September 1, 2025, the IRS determines P ceases to exist for purposes of this section because the IRS has determined that P does not have the ability to pay under paragraph (b)(2)(i) of this section. G terminated under section 708(b)(1) on December 31, 2024. On September 1, 2025, the IRS determines that G ceased to exist in 2024 for purposes of this section in accordance with paragraph (b)(2)(i) of this section. J and K, individuals, were the only partners of G during 2024. Therefore, under paragraph (d)(1)(ii) of this section, J and K, the partners of G during G's 2024 partnership taxable year, are the former partners of G for purposes of this section. Therefore, J and K are required to take into account their share of the adjustments contained in the statement furnished by P to G in accordance with paragraph (e) of this section.

(g) *Applicability date—(1) In general.* Except as provided in paragraph (g)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any

partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 28.** Section 301.6241–4 is added to read as follows:

**§ 301.6241–4 Payments nondeductible.**

(a) *Payments nondeductible.* No deduction is allowed under subtitle A of the Internal Revenue Code for any payment required to be made by a partnership under subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63). Payment by a partnership of any amount required to be paid under subchapter C of chapter 63, including any imputed underpayment (as defined in § 301.6241–1(a)(3)), or interest, penalties, additions to tax, or additional amounts with respect to an imputed underpayment, is treated as an expenditure described in section 705(a)(2)(B).

(b) *Applicability date—(1) In general.* Except as provided in paragraph (b)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 29.** Section 301.6241–5 is added to read as follows:

**§ 301.6241–5 Extension to entities filing partnership returns.**

(a) *Entities filing a partnership return.* Except as described in paragraph (c) of this section, an entity that files a partnership return for any taxable year is subject to the provisions of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and the regulations thereunder with respect to such taxable year even if it is determined that the entity filing the partnership return was not a partnership for such taxable year. Accordingly, any partnership-related item (as defined in § 301.6241–6) and any person holding an interest in the entity, either directly or indirectly, at any time during that taxable year are subject to the provisions of subchapter C of chapter 63 and the regulations thereunder for such taxable year.

(b) *Partnership return filed but no entity found to exist.* Paragraph (a) of this section also applies where a partnership return is filed for a taxable year, but the IRS determines that no entity existed at all for such taxable year. For purposes of applying paragraph (a) of this section, the

partnership return is treated as if it were filed by an entity.

(c) *Exceptions.* Paragraph (a) of this section does not apply to—

(1) Any taxable year for which an election under section 6221(b) is in effect, treating the return as if it were filed by a partnership for the taxable year to which the election relates, and

(2) Any taxable year for which a partnership return was filed for the sole purpose of making the election described in section 761(a) (regarding election out of subchapter K for certain unincorporated organizations).

(d) *Applicability date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 30.** Section 301.6241–6 is added to read as follows:

**§ 301.6241–6 Partnership-related Item.**

(a) *In general.* The term *partnership-related item* means—

(1) Any item or amount with respect to the partnership (as described in paragraph (b) of this section) which is relevant in determining the tax liability of any person under chapter 1 of subtitle A of the Internal Revenue Code (chapter 1) (as described in paragraph (c) of this section), and

(2) Any partner's distributive share of any such item or amount.

(b) *Item or amount with respect to the partnership.* For purposes of this section, an item or amount is with respect to the partnership without regard to whether or not such item or amount appears on the partnership return. An item or amount is with respect to the partnership if—

(1) The item or amount is shown or reflected, or required to be shown or reflected, on a return of the partnership under section 6031, the regulations thereunder, or the forms and instructions prescribed by the Internal Revenue Service (IRS) for the partnership's taxable year;

(2) The item or amount is in the partnership's books or records;

(3) The item or amount is an imputed underpayment;

(4) The item or amount relates to a transaction with the partnership by a partner acting in its capacity as a partner or by an indirect partner (as defined in § 301.6241–1(a)(4)) acting in its capacity as an indirect partner;

(5) The item or amount relates to a transaction that is described in section 707(a)(2), 707(b), or 707(c);

(6) The item or amount relates to basis in the partnership;

(7) The item or amount relates to a liability of the partnership that is reported or reportable by a partner acting in its capacity as a partner or an indirect partner acting in its capacity as an indirect partner, including such partner or indirect partner's share of the liability; or

(8) Any legal or factual determinations necessary to make an adjustment to an item or amount described in paragraphs (b)(1) through (7) of this section, such as a determination regarding—

(i) The validity of any election made by the partnership,

(ii) The partnership's accounting practices and methods;

(iii) Whether a partnership exists for tax purposes and whether multiple partnerships should be treated as a single partnership;

(iv) Whether any items or transactions of the partnership lack economic substance or should otherwise be disregarded, collapsed, recharacterized, or attributed to other persons;

(v) Whether a partnership terminates under section 708(b)(1) or as a result of a transaction under Rev. Rul. 99–6 (1999–1 C.B. 432) (see § 601.601(d)(2) of this chapter); or

(vi) The type of partnership interest held by any partner.

(c) *Relevant in determining the tax liability of any person under chapter 1.* For purposes of this section, an item or amount is relevant in determining the tax liability of any person under chapter 1 without regard to application of subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) and without regard to whether such item or amount, or adjustment to such item or amount, has an effect on the tax liability of any particular person under chapter 1.

(d) *Examples of partnership-related items.* The term partnership-related item includes—

(1) The character, timing, source, and amount of the partnership's income, gain, loss, deductions, and credits;

(2) The character, timing, and source of the partnership's activities;

(3) The character, timing, source, value, and amount of any contributions to, and distributions from, the partnership;

(4) The partnership's basis in its assets, the character and type of the assets, and the value (or revaluation such as under § 1.704–1(b)(2)(iv)(f) or (s) of this chapter) of the assets;

(5) The amount and character of partnership liabilities and any changes to those liabilities from the preceding tax year;

(6) The category, timing, and amount of the partnership's creditable expenditures;

(7) Any item or amount resulting from a partnership termination;

(8) Any item or amount relating to an election under section 754;

(9) Partnership allocations and any special allocations; and

(10) Whether any person is a partner in the partnership.

(e) *Examples.* The following examples illustrate the provisions of this section. For purposes of these examples, Partnership is subject to the provisions of subchapter C of chapter 63 and all taxpayers are calendar year taxpayers.

*Example 1.* Partnership enters into a transaction with A to purchase widgets for \$100 in taxable year 2020. A is not a partner of Partnership or an indirect partner of Partnership. The transaction is not a transaction described in 707(a)(2), 707(b), or 707(c). Partnership pays A \$100 for the widgets. Any deduction or expense of the Partnership for the purchase of the widgets is an item or amount that relates to a transaction with Partnership and is relevant to determining the liability of any person under chapter 1 pursuant to paragraph (c) of this section. Therefore, the deduction or expense is a partnership-related item. However, the income to A resulting from the transaction with Partnership is not an item or amount with respect to Partnership under paragraph (b) of this section because although the amount of income relates to a transaction with Partnership, the amount of income is reported or reportable by A, and A is not a partner (direct or indirect) of Partnership. Accordingly, the amount of income reportable by A is not a partnership-related item.

*Example 2.* B loans Partnership \$100 in Partnership's 2020 taxable year. Partnership makes an interest payment to B in 2020 of \$5. B is a partner in Partnership in the 2020 taxable year, but B loaned the \$100 to Partnership in a capacity other than B's capacity as a partner. Partnership's liability relating to the loan by B to Partnership and the \$5 of interest expense paid by the Partnership are items or amounts that relates to a transaction with or liability of Partnership and are relevant to determining the liability of any person under chapter 1 pursuant to paragraph (c) of this section. However, the treatment of the loan by B and the amount of interest income received by B are not items or amounts with respect to Partnership under paragraph (b) of this section because although they relate to a transaction with or liability of Partnership, the loan and interest income are reportable by B, and B was not acting in his capacity as a partner when he loaned the \$100 to Partnership. Accordingly, the loan as treated by B and the amount of interest income to B is not a partnership-related item.

(f) *Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 31.** Section 301.6241–7 is added to read as follows:

**§ 301.6241–7 Coordination with Other Chapters of the Internal Revenue Code.**

(a) *Coordination with other chapters*—(1) *In general.* Subchapter C of chapter 63 of the Internal Revenue Code (subchapter C of chapter 63) only applies to tax imposed by chapter 1 of the Internal Revenue Code (Code) and not to any tax imposed (including any amount required to be deducted or withheld) under any chapter of the Code other than chapter 1 of the Code (chapter 1), including chapter 2, 2A, 3, or 4 of the Code. Accordingly, for purposes of determining taxes imposed under chapters of the Code other than chapter 1, the Internal Revenue Service (IRS) may make an adjustment to any partnership-related item (as defined in § 301.6241–6) in a proceeding that is not under subchapter C of chapter 63. To the extent an adjustment or determination is made under subchapter C of chapter 63 for purposes of chapter 1 and is relevant in determining tax imposed under a chapter of the Code other than chapter 1, such adjustment or determination must be taken into account for purposes of determining such tax.

(2) *Examples.* The following examples illustrate the rules of this paragraph (a) as applied to cases in which a partnership has a withholding obligation under chapter 3 or chapter 4 with respect to income that the partnership earns. For purposes of these examples, each partnership is subject to the provisions of subchapter C of chapter 63 of the Code, and the partnership and its partners are calendar year taxpayers.

*Example 1.* Partnership, a partnership created or organized in the United States, has two equal partners, A and B. A is a nonresident alien who is a resident of Country A, and B is a U.S. citizen. In 2018, Partnership earned \$200 of U.S. source royalty income. Partnership was required to withhold 30 percent of the gross amount of the royalty income allocable to A unless Partnership had documentation that it could rely on to establish that A was entitled to a reduced rate of withholding. See §§ 1.1441–1(b)(1) and 1.1441–5(b)(2)(i)(A) of this chapter. Partnership withheld \$15 from the

\$100 of royalty income allocable to A based on its incorrect belief that A is entitled to a reduced rate of withholding under the U.S.-Country A Income Tax Treaty. In 2020, the IRS determines in an examination of Partnership's Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, that Partnership should have withheld \$30 instead of \$15 on the \$100 of royalty income allocable to A because Partnership failed to obtain documentation from A establishing a valid treaty claim for a reduced rate of withholding. The tax imposed on Partnership for its failure to withhold on that income, however, is not a tax imposed by chapter 1. Rather, it is a tax imposed by chapter 3, which is not a partnership-related item under § 301.6241–6. Therefore, in accordance with section 6221(a), the adjustment to increase Partnership's withholding tax liability by \$15 is not determined under subchapter C of chapter 63, and instead must be determined as part of the Form 1042 examination.

*Example 2.* Partnership, a partnership created or organized in the United States, has two equal partners, A and B. A is a nonresident alien who is a resident of Country A, and B is a U.S. citizen. In 2018, Partnership earned \$100 of U.S. source dividend income. Partnership was required to report the dividend income on its 2018 Form 1065, U.S. Return of Partnership Income, and withhold 30 percent of the gross amount of the dividend income allocable to A unless Partnership had documentation that it could rely on to establish that A was entitled to a reduced rate of withholding. See §§ 1.1441–1(b)(1) and 1.1441–5(b)(2)(i)(A) of this chapter. In 2020, in an examination of Partnership's Form 1042, the IRS determines that Partnership earned but failed to report the \$100 of U.S. source dividend income in 2018. The adjustment to increase Partnership's dividend income by \$100 is an adjustment to a partnership-related item. The tax imposed on Partnership for its failure to withhold on that income, however, is not a tax imposed by chapter 1; rather, it is a tax imposed by chapter 3. Pursuant to § 301.6221(a)-1(a), only chapter 1 tax attributable to adjustments to partnership-related items is assessed under subchapter C of chapter 63. Therefore, because the tax imposed with respect to the adjustment is a chapter 3 tax, under paragraph (a)(1) of this section, the IRS may determine, assess, and collect chapter 3 tax attributable to an adjustment to a partnership-related item without conducting a proceeding under subchapter C of chapter 63. Accordingly, the IRS may determine the chapter 3 tax in the examination of Partnership's Form 1042 by adjusting Partnership's withholding tax liability by an additional \$15 for failing to withhold on the \$50 of dividend income allocable to A. However, the IRS must initiate an administrative proceeding under subchapter C of chapter 63 to make any adjustments for purposes of chapter 1 attributable to the income. If the IRS subsequently initiates an administrative proceeding under subchapter C of chapter 63 and makes an adjustment to the same item of income, the portion of the dividend income allocable to A will be disregarded in

the calculation of the total netted partnership adjustment to the extent that the chapter 3 tax has been collected with respect to such income. See § 301.6225–1(b)(3).

(b) *Coordination with chapters 3 and 4*—(1) *In general.* In the case of any tax imposed under chapter 3 or chapter 4 that is determined with respect to a partnership adjustment determined under subchapter C of chapter 63 for purposes of chapter 1, such tax is determined with respect to the reviewed year (as defined in § 301.6241–1(a)(8)) and is imposed (or required to be deducted and withheld) with respect to the adjustment year (as defined in § 301.6241–1(a)(1)).

(2) *Definitions.* The following definitions apply for purposes of this paragraph (b) and the regulations under subchapter C of chapter 63.

(i) *Amount subject to withholding.* The term *amount subject to withholding* means an amount subject to withholding (as defined in § 1.1441–2(a) of this chapter), a withholdable payment (as defined in § 1.1473–1(a) of this chapter), or the allocable share of effectively connected taxable income (as computed under § 1.1446–2(b) of this chapter).

(ii) *Chapter 3.* The term *chapter 3* means sections 1441 through 1464 of subtitle A of the Code, but does not include section 1443(b).

(iii) *Chapter 4.* The term *chapter 4* means sections 1471 through 1474 of subtitle A of the Code.

(3) *Partnership pays an imputed underpayment.* If a partnership pays an imputed underpayment (as determined under § 301.6225–1(b)) and the total netted partnership adjustment (as calculated under § 301.6225–1(b)(2)) includes a partnership adjustment to an amount subject to withholding, the partnership is treated as having paid (at the time that the imputed underpayment is paid) the amount required to be withheld with respect to that partnership adjustment under chapter 3 or chapter 4 for purposes of applying §§ 1.1463–1 and 1.1474–4 of this chapter. See § 301.6225–1(b)(3) for the coordination rule that applies for calculating an imputed underpayment when an adjustment is made to an amount subject to withholding for which tax has been collected under chapter 3 or chapter 4.

(4) *Partnership makes an election under section 6226 with respect to an imputed underpayment*—(i) *In general.* A partnership that makes an election under § 301.6226–1 with respect to an imputed underpayment must pay the amount of tax required to be withheld under chapter 3 or chapter 4 on the amount of any adjustment set forth in

the statement described in § 301.6226–2(a) to the extent that it is an adjustment to an amount subject to withholding, and the IRS has not already collected tax attributable to the adjustment under chapter 3 or chapter 4. The partnership must pay the amount due under this paragraph (b)(4)(i) on or before the due date of the partnership return for the adjustment year (without regard to extension), and must make the payment in the manner prescribed by the IRS in forms, instructions, and other guidance. For the rules governing partners subject to the taxes imposed by chapters 3 and 4 when the partner receives a statement under § 301.6226–2, see § 301.6226–3(f). See § 301.6226–3(e)(3)(v) for the application of the rules of this paragraph (b)(4) to pass-through partners (as defined in § 301.6241–1(a)(5)).

(ii) *Reduced rate of tax.* A partnership may reduce the amount of tax it is required to pay under paragraph (b)(4)(i) of this section to the extent that it can associate valid documentation from a reviewed year partner pursuant to the regulations under chapter 3 or chapter 4 (other than pursuant to § 1.1446–6 of this chapter) with the portion of the adjustment that would have been

subject to a reduced rate of tax in the reviewed year. For this purpose, the partnership may rely on documentation that the partnership possesses that is valid with respect to the reviewed year (determined without regard to the expiration after the reviewed year of any validity period prescribed in § 1.1441–1(e)(4)(ii), § 1.1446–1(c)(2)(iv)(A), or § 1.1471–3(c)(6)(ii) of this chapter), or new documentation that the partnership obtains from the reviewed year partner that includes a signed affidavit stating that the information and representations associated with the documentation are accurate with respect to the reviewed year.

(iii) *Reporting requirements.* A partnership required to pay tax under paragraph (b)(4)(i) of this section must file the appropriate return and issue information returns as required by regulations under chapter 3 or chapter 4. For return and information return requirements, see § 1.1446–3(d)(1)(iii); § 1.1461–1(b), (c); § 1.1474–1(c), (d) of this chapter. The partnership must file the return and issue information returns for the year that includes the date on which the partnership pays the tax required to be withheld under paragraph (b)(4)(i) of this section. The

partnership must report the information on the return and information returns in the manner prescribed by the IRS in forms, instructions, and other guidance.

(iv) *Partners subject to withholding.* A reviewed year partner that is subject to withholding under paragraph (b)(4)(i) of this section must follow the rules under § 301.6226–3(f).

(c) *Applicability date—(1) In general.* Except as provided in paragraph (c)(2) of this section, this section applies to partnership taxable years beginning after December 31, 2017.

(2) *Election under § 301.9100–22 in effect.* This section applies to any partnership taxable year beginning after November 2, 2015 and before January 1, 2018 for which a valid election under § 301.9100–22 is in effect.

■ **Par. 32.** Section 301.6241–8 is added to read as follows:.

**§ 301.6241–8 Treatment of special enforcement matters—[Reserved]**

**Douglas W. O'Donnell,**

*Acting Deputy Commissioner for Service and Enforcement.*

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