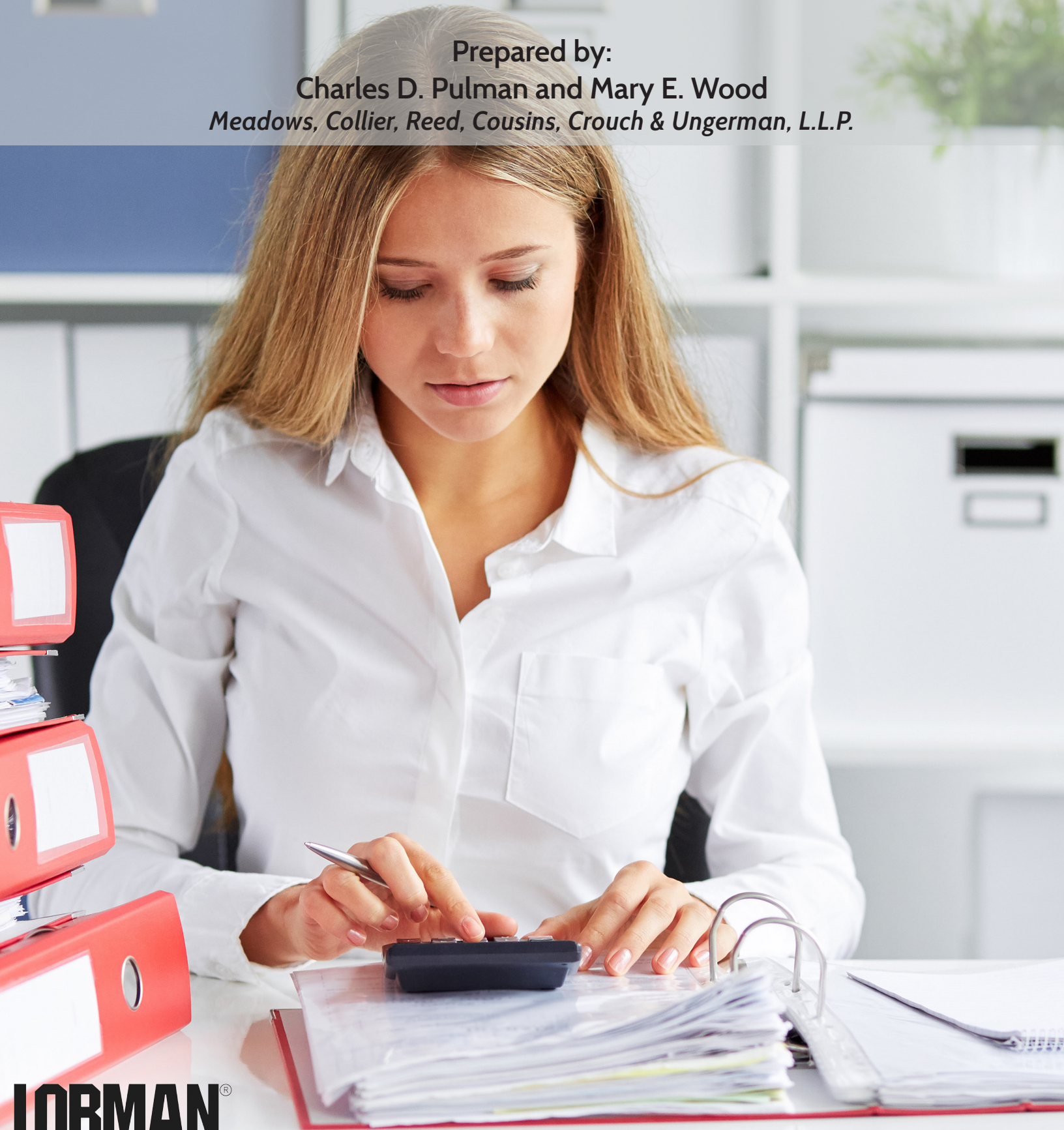


Partnership Tax Audit and Collection Rules: Administrative Adjustment Requests (Section 6227)

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ADMINISTRATIVE ADJUSTMENT REQUESTS (Section 6227)

The AAR Provisions generally describe the procedures for amending partnership returns and filing related refund claims.

A. General

A partnership may file a request for an administrative adjustment (“AAR”) with respect to any partnership-related item for any partnership taxable year. Reg. § 301.6227-1(a).

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. Reg. § 301.6227-1(a). In addition, a partnership may not file an AAR solely for the purpose of changing the designation of the partnership representative or changing the appointment of a designated individual. *Id.*

B. Determinations

When filing an AAR, the partnership must determine whether the adjustments requested in the AAR result in an Imputed Underpayment Amount. If the adjustments requested in the AAR result in an Imputed Underpayment Amount, the partnership must take the adjustments into account under rules as described in Reg. § 301.6227-2(b) (Imputed Underpayment Amount computation and payment) unless the partnership makes an election under Reg. § 301.6227-2(c) (Push Out Election), in which case each Reviewed Year partner must take the adjustments into account. Reg. § 301.6227-1(a).

If the adjustments requested in the AAR do not result in an Imputed Underpayment Amount, such adjustments must be taken into account by the Reviewed Year partners in accordance with Reg. § 301.6227-3. *Id.*

C. Period of Limitations

A partnership may not file an AAR more than 3 years after the later of (1) the date on which the partnership return for such year is filed or (2) the last day for filing the partnership return for such year (determined without regard to extensions). Section 6227(c); Reg. § 301.6227-1(b).

D. Where NAP Issued

A partnership may not file an AAR for a year to which a NAP has been mailed previously to the partnership under Section 6231. Section 6227(c). Reg. § 301.6227-1(b).

E. Form; Statement

The AAR must be filed in accordance with IRS forms, instructions, and other guidance, be signed by the PR under penalties of perjury. The IRS has published Form 8082 and include the following information:

- (i) the adjustments requested;
- (ii) if a Reviewed Year partner is required to take into account the adjustments for the reasons set out in B above, a statement of the name and correct TIN of the Reviewed Year partner to whom the statement is being furnished; the current or last address of the partner that is known to the partnership; the Reviewed Year partner's share of items as originally reported on statements furnished to the partner under Section 6031(b), and, if applicable, the Reviewed Year partner's share of the adjustments; the date the statement is furnished to the partner; the partnership taxable year to which the adjustments relate;
- (iii) other information prescribed by the IRS in forms, instructions, or other guidance.

Reg. § 301.6227-1(c)(2) and (e).

If the AAR does not include the above information, the IRS may, but is not required to, invalidate the AAR. Reg. § 301.6227-(c)(2).

Generally, the partnership and its partners are bound to the adjustments as reported on the AAR, unless the IRS determines otherwise. Prop. Reg. § 301.6227-1(f).

F. Partner Modification

A partnership may request modification of the Imputed Underpayment Amount for tax-exempt partners, tax rates, specified passive activity losses, limitations or restrictions in the grouping of adjustments, qualified investment entities, tax treaty modifications, or as provided in forms, instructions, or other guidance prescribed by the IRS with respect to AARs. A partnership may not file an ARR and also request an amended return or pull-in modification. To request a modification, the partnership must:

- (i) notify the IRS of any modification;
- (ii) describe the effect of the modification on the Imputed Underpayment Amount;
- (iii) provide an explanation of the basis for the modification;
- (iv) provide documentation to support the partnership's eligibility for the modification.

Reg. § 301.6227-2(a)(2).

IRS prior approval is not required for a modification to an AAR. Reg. § 301.6227-2(a)(2)(i).

G. Push Out Election

The partnership may elect under the AAR to have each Reviewed Year partner take into account the adjustments requested in the AAR. If a valid Push Out Election is made, the partnership does not pay the Imputed Underpayment Amount. Rather, each Reviewed Year partner must take into account his/her share of the adjustments requested in the AAR that are associated with the Imputed Underpayment and any modifications requested are

disregarded and all adjustments requested in the AAR that are associated with the Imputed Underpayment must be taken into account by each Reviewed Year partner. Reg. § 301.6227-2(c). Accordingly, if a Push Out Election is made, the partnership may not request modifications. Thus, the partnership may only claim a modification to the Imputed Underpayment Amount by paying the tax. Reg. § 301.6227-2(c).

If the Reviewed Year partner is a pass-through partner, the Reviewed Year partner may push out the partnership adjustments to its partners. For these purposes, the rules under Reg. § 301.6226-3(e) apply. Reg. § 301.6227-3(c)(1). If the adjustments requested in the AAR do not result in an Imputed Underpayment Amount, the pass-through partner must take into account the partnership adjustments under the rules specified in Prop. Reg. § 301.6226-3(e)(3). Reg. § 301.6227-3(c)(2). Reg. § 301.6227-3(c)(3) sets out the information required to be included in the push out statement.

H. No Imputed Underpayment Amount

If the adjustments requested in an AAR do not result in an Imputed Underpayment Amount, the partnership must furnish statements to each Reviewed Year partner and file such statements with the IRS. Each Reviewed Year partner must take into account its share of the adjustments requested in the AAR as though a Push Out Election had been made. Reg. § 301.6227-1(d).

I. Penalties

The IRS may impose a penalty, addition to tax and additional amount on the Imputed Underpayment or on the failure to pay timely the Imputed Underpayment. Reg. § 301.6227-2(b)(2).

J. Refunds

Reg. § 301.6227-3(b)(1) provides that the adjustments taken into account by the Reviewed Year partner under AAR do not entitle the partner to a refund of tax under Chapter 1 of Subtitle A to which the partner is not entitled because the partner is not a tax-paying taxpayer. The example is given of a partnership partner to which this statement applies. However, this Regulation does give an example of an individual partner being able to claim a refund of tax. Reg. § 301.6227-3(b)(2)(Ex. 2).

K. Increased Interest Rate Disregarded

Reg. § 301.6227-3(b) provides that if the Reviewed Year partner is taking into account the adjustments (either because no Imputed Underpayment or Push Out Election), the increased interest rate provision is disregarded.

L. Use of AAR In Lieu of Amended K-1

The Blue Book at page 82 states that a Schedule K-1 cannot be amended after the due date (including extensions) of the partnership return but the AAR process can be used to amend the prior years.

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