



# Partnership Tax Audit and Collection Rules:

## Assessment and Collection (Section 6232)

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## **ASSESSMENT AND COLLECTION (Section 6232)**

### **A. Method for Assessing and Collecting**

The Imputed Underpayment Amount is assessed and collected in the same manner as if it were a tax imposed for the Adjustment Year by subtitle A of the Code, except in the case of an AAR, the underpayment must be paid when the request is filed. Section 6232(a); Reg. § 301.6232-1(a).

The deficiency procedures under subchapter B of chapter 63 of the Code do not apply to an assessment of the Imputed Underpayment Amount. Accordingly, no notice under Section 6212 is required for, and the restrictions under Section 6213 do not apply to, the assessment of an Imputed Underpayment Amount. Reg. § 301.6232-1(a).

Upon receipt and demand, an Imputed Underpayment Amount must be paid by the partnership at the time and place stated in the IRS notice. If an adjustment is made through the filing of an AAR and taken into account by the partnership, payment of the Imputed

Underpayment Amount is due on the date the AAR is filed. The IRS may assess the amount of the Imputed Underpayment Amount reflected on the AAR on the date the AAR is filed. Reg. § 301.6232-1(b).

**B. Timing**

Generally, no assessment of an Imputed Underpayment Amount may be made (and no levy or proceeding in any court for the collection of any amount resulting from such adjustment may be made, begun or prosecuted) before (1) the close of the 90th day after the day on which a FPA was mailed and (2) if a petition is filed in court with respect to the FPA, the decision of the court has become final. Section 6232(b); Reg. § 301.6232-1(c).

**C. Mathematical or Clerical Adjustments**

If a partnership is notified of a mathematical or clerical error resulting in an adjustment to an item on the partnership return, rules similar to the rules of paragraphs (1) and (2) of Section 6213(b) apply to such adjustment. Section 6232(d); Reg. § 301.6232-1(d). An IRS notice to a partnership regarding a mathematical or clerical error is not an FPA and, therefore, no petition for readjustment may be filed in the U.S. Tax Court, district court, or Court of Federal Claims. Reg. § 301.6232-1(d).

**Note:** Section 6213 (a) and (b) set forth procedures for making mathematical or clerical adjustments to a return. Generally, such assessments are not subject to the deficiency procedures unless a taxpayer requests abatement within 60 days of notice. In such instances, any reassessment is subject to the deficiency procedures of the Code.

**D. Mathematical or Clerical Errors for Upper-Tier Partnerships**

If a partnership (P2) is a partner in another partnership (P1), any adjustment on account of P2's failure to comply with Section 6222(a) (requiring partners to be consistent with a partnership return) is treated as a mathematical or clerical error. In such instance, subparagraph (2) of Section 6213, which provides a mechanism for abating the assessment and forcing the issuance of a notice of deficiency, does not apply. Section 6232(d)(1)(B).

**E. Partnership Waivers**

A partnership may at any time (regardless of whether any notice of partnership adjustment has been issued), by a signed written notice filed with the Secretary, waive the restrictions imposed on the issuance of an assessment on any Partnership Adjustment. Section 6232(d)(2). Reg. § 301.6232-1(d)(2).

**F. Interest and Penalties (Section 6233)**

1. Reviewed Year.

- a. Overview. Unless a Push Out Election is made, a partnership is liable for interest and penalties with respect to a partnership adjustment for a Reviewed Year. Reg. § 301.6233(a)-1(a).
- b. Interest. Interest on the Imputed Underpayment Amount begins on the day after the due date of the partnership return (without regard to extensions) for the Reviewed Year and ends on the earlier of: (1) the date prescribed for payment (see Reg. § 301.6232-1(b)); (2) the due date of the partnership return (without regard to extensions) for

the Adjustment Year; or (3) the date the Imputed Underpayment Amount is fully paid. Reg. § 301.6233(a)-1(b).

- c. Penalties. Under 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. *See also* Reg. § 301.6225-2(d)(viii). A partner-level defense may generally not be raised in a proceeding of the partnership, but the preamble to the Proposed Regulations notes that the IRS is not precluded from addressing partner-level defenses through a closing agreement.
- d. Section 6662, 6662A, and 6663 Penalties. The Regulations provide guidance for the computation of the accuracy-related penalties under Sections 6662 and 6662A and fraud penalties under Section 6663. Reg. § 301.6233(a)-1(c)(2). For purposes of computing the penalties, Adjustments that do not result in an Imputed Underpayment Amount or are excluded from determining an Imputed Underpayment are disregarded. Reg. § 301.6233(a)-1(c)(2)(i). Final Reg. § 301.6233(a)-1(c)(2) contains detailed procedures for determining the amount of penalties based on grouping, subgrouping, negative adjustments and positive adjustments in each group or subgroup and credits.

- e. Fraud Penalties. If any portion of the Imputed Underpayment Amount is determined by the IRS to be attributable to fraud under Section 6663, the entire Imputed Underpayment Amount is treated as attributable to fraud except as to portion of Imputed Underpayment established by preponderance of evidence not attributable to fraud. Reg. § 301.6233(a)-1(c)(2)(iv)(A).
- f. Substantial Underpayment Penalty. The Imputed Underpayment is treated as the underpayment for purposes of the Substantial Underpayment penalty under Section 6662(d)(2), with the net income or loss of the partnership for the Reviewed Year treated as taxable income. Reg. § 301.6233(a)-1(c)(B).
- g. Reportable Transaction Understatement Penalty. The portion of an Imputed Underpayment attributable to an item under Section 6662A(b)(2) is treated as the reportable transaction underpayment for purposes of the reportable transaction underpayment penalty under Section 6662A.
- h. Reasonable Cause and Good Faith. For purposes of determining whether a partnership satisfies the reasonable cause and good faith exception with respect to a Section 6662, 6662A, or 6663 penalty, the facts and circumstances applicable to the partnership apply. Reg. § 301.6233(a)-1(c)(2)(iv)(D).

2. Adjustment Year – Interest and Penalties.

- a. Overview. A partnership is liable for interest and penalties with respect to an Adjustment for an Adjustment Year return if the IRS determines there is an Imputed Underpayment Amount under Section 6225(a) or the partnership files an AAR reflecting an Imputed Underpayment Amount and the partnership does not pay the Imputed Underpayment Amount by the date prescribed for payment (see Reg. § 301.6232-1(b)). Reg. § 301.6233(b)-1(a), (b).
- b. Interest. Interest on the Imputed Underpayment Amount begins on the date prescribed for payment (see Reg. § 301.6232-1(b)) and ends on the date payment of the Imputed Underpayment Amount is made. Reg. § 301.6233(b)-1(c).
- c. Penalties. If a partnership fails to pay an Imputed Underpayment Amount by the date prescribed for payment (see Reg. § 301.6232-1(b)), the Section 6651(a)(2) failure-to-pay penalty applies.

**G. Appeals**

On March 25, 2019, the IRS issued interim guidance to Appeals employees for administrative appeals procedures under PAR. Interim Guidance Memorandum, Control No. 08-0319-0005. Under the guidance, PAR appeals requests will be routed to the IRS' office in Laguna Niguel, California for initial screening before assignment to an Appeals officer. The administrative guidance indicates that the IRS is currently preparing guidance on Appeals procedures and creating a new IRM pt. 8.19 section for PAR cases.



## **H. Collection Due Process**

The Blue Book at page 81 states that the merits of FPA cannot be raised at a CDP hearing but the taxpayer is entitled to a CDP hearing for other aspects of the IRS collection process.

## **I. Limit on Amount of Imputed Underpayment**

If an FPA is mailed to the partnership and the partnership does not file a timely petition to challenge the partnership adjustments, the amount for which the partnership is liable under Section 6225 with respect to such FPA cannot exceed the amount determined in such FPA. Reg. § 301.6232-1(e).

## **J. Failure to Pay**

TCCA added new Section 6232(f). If the Imputed Underpayment or any “specified similar amount” (including amounts owed by a partner for failure to file the push-out statement and any interest or penalties) are not paid within 10 days after notice and demand, the following results:

1. Increase Interest Rate. The normal interest rate under Section 6621(a)(2)(B) is increased by 5 percentage points instead of 3 percentage points.
2. Partner Assessed. Each Adjustment Year partner or former partners if the partnership has “ceased to exist” can be assessed directly by the IRS a tax equal to that partner’s “proportionate share” (as determined by the IRS based on distributive shares).
3. S Corporations. For purposes of Section 6232(f), S corporation and its shareholders are treated as partnership and partners, respectively.

4. Not a Deficiency. Section 6232(f)(6)(A) provides that the deficiency procedures under subchapter B of the Code do not apply.
5. Limitation on Assessment. Section 6232(f)(6)(B) provides the assessment against the partner under Section 6232(f) must be made within 2 years after the notice and demand under Section 6232(f)(1) is made.

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