

## **IRC Section 6225(a)(1)**

### Partnership adjustment by Secretary

(a) In general.

In the case of any adjustments by the Secretary to any partnership-related items with respect to any reviewed year of a partnership-

(1) if such adjustments result in an imputed underpayment, the partnership shall pay an amount equal to such imputed underpayment in the adjustment year as provided in section 6232 , and

(2) if such adjustments do not result in an imputed underpayment, such adjustments shall be taken into account by the partnership in the adjustment year.

(b) Determination of imputed underpayments.

For purposes of this subchapter-

(1) In general.

Except as otherwise provided in this section, any imputed underpayment with respect to any reviewed year shall be determined by the Secretary by -

(A) appropriately netting all partnership adjustments with respect to such reviewed year, and,

(B) applying the highest rate of tax in effect for the reviewed year under section 1 or 11.

(2) Adjustments to distributive shares of partners not netted. In the case of any adjustment which 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.

(3) Adjustments separately netted by category. For purposes of paragraph (1)(A), 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 this title.

(4) Limitation on adjustments that may be taken into account. If any adjustment would (but for this paragraph)-

(A) result in a decrease in the amount of the imputed underpayment, and

(B) could be subject to any additional limitation under the provisions of this title (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 under paragraph (1)(A) except to the extent otherwise provided by the Secretary.

(c) Modification of imputed underpayments.

(1) In general.

The Secretary shall establish procedures under which the imputed underpayment amount may be modified consistent with the requirements of this subsection.

(2) Procedures for partners to take adjustments into account.

(A) Amended returns of partners. Such procedures shall provide that if-

(i) one or more partners file returns for the taxable year of the partners which includes the end of the reviewed year of the partnership (and for any taxable year with respect to which any tax attribute is affected by reason of any adjustment referred to in clause (ii)),

(ii) such returns take into account all adjustments under subsection (a) properly allocable to such partners (and the effect of such adjustments on any tax attributes), and

(iii) payment of any tax due is included with such returns,

then the imputed underpayment amount shall be determined without regard to the portion of the adjustments so taken into account.

(B) Alternative procedure to filing amended returns. Such procedures shall provide that, with respect to any partner referred to in subparagraph (A), the requirements of subparagraph (A) shall be treated as satisfied with respect to adjustments properly allocable to such partner if, in lieu of filing the returns described in such subparagraph-

(i) the amounts described in subparagraph (A)(iii) are paid by the partner,

(ii) the partner agrees to take into account, in the form and manner prescribed by the Secretary, the adjustments to the tax attributes of such partner referred to in subparagraph (A)(ii), and

(iii) such partner provides, in the form and manner specified by the Secretary (including, if the Secretary so specifies, in the same form as on an amended return), such information as the Secretary may require to carry out this subparagraph.

(C) Reallocation of distributive share. In the case of any adjustment which reallocates the distributive share of any item from one partner to another, this paragraph shall apply with respect to any such partner only if the requirements of subparagraph (A) or (B) are satisfied with respect to all partners affected by such adjustment.

(D) Application of statute of limitations. In the case of adjustments referred to in subparagraph (A)(ii), sections 6501 and 6511 shall not apply with respect to any

return filed for purposes of subparagraph (A)(i) or any amount paid under subparagraph (A)(iii) or (B)(i).

(E) Adjustments to tax attributes binding for affected taxable years of partner. The adjustments to the tax attributes of any partner provided for in subparagraph (A)(ii) or (B)(ii) shall be binding with respect to the taxable year of the partner which includes the end of the reviewed year of the partnership and any taxable years for which any tax attribute is affected by such adjustment. Any failure to so treat any such tax attribute shall be treated for purposes of this title in the same manner as 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.

(F) Adjustments not treated as amended return. An administrative adjustment request under section 6227 and a partnership adjustment tracking report under section 6226(b)(4)(A) shall not be treated as a return for purposes of this paragraph.

(3) Tax-exempt partners.

Such procedures shall provide for determining the imputed underpayment without regard to the portion of the adjustment that the partnership demonstrates is allocable to a partner that would not owe tax by reason of its status as a tax-exempt entity (as defined in section 168(h)(2) ).

(4) Modification of applicable highest tax rates.

(A) In general. Such procedures shall provide for taking into account a rate of tax lower than the rate of tax described in subsection (b)(1)(A) with respect to any portion of the adjustment that the partnership demonstrates is allocable to a partner which-

(i) is a C corporation, or

(ii) in the case of a capital gain or qualified dividend, is an individual.

In no event shall the lower rate determined under the preceding sentence be less than the highest rate in effect with respect to the income and taxpayer described in clause (i) or clause (ii), as the case may be. For purposes of clause (ii), an S corporation shall be treated as an individual.

(B) Portion of imputed underpayment to which lower rate applies.

(i) In general. Except as provided in clause (ii), the portion of the imputed underpayment to which the lower rate applies with respect to a partner under subparagraph (A) shall be determined by reference to the partners' distributive share of items to which the imputed underpayment relates.

(ii) Rule in case of varied treatment of items among partners. If the imputed underpayment is attributable to the adjustment of more than 1 item, and any partner's distributive share of such items is not the same with respect to all such items, then the portion of the imputed underpayment to which the lower rate applies with respect to a partner

under subparagraph (A) shall be determined by reference to the amount which would have been the partner's distributive share of net gain or loss if the partnership had sold all of its assets at their fair market value as of the close of the reviewed year of the partnership.

(5) Certain passive losses of publicly traded partnerships.

(A) In general. In the case of a publicly traded partnership (as defined in section 469(k)(2) ), such procedures shall provide-

(i) for determining the imputed underpayment without regard to the portion of the adjustment that the partnership demonstrates is attributable to a net decrease in a specified passive activity loss which is allocable to a specified partner, and

(ii) for the partnership to take such net decrease into account as an adjustment in the adjustment year with respect to the specified partners to which such net decrease relates.

(B) Specified passive activity loss. For purposes of this paragraph, the term "specified passive activity loss" means, with respect to any specified partner of such publicly traded partnership, the lesser of"

(i) the passive activity loss of such partner which is separately determined with respect to such partnership under section 469(k) with respect to such partner's taxable year in which or with which the reviewed year of such partnership ends, or

(ii) such passive activity loss so determined with respect to such partner's taxable year in which or with which the adjustment year of such partnership ends.

(C) Specified partner. For purposes of this paragraph, the term "specified partner" means any person if such person-

(i) is a partner of the publicly traded partnership referred to in subparagraph (A),

(ii) is described in section 469(a)(2), and

(iii) has a specified passive activity loss with respect to such publicly traded partnership, with respect to each taxable year of such person which is during the period beginning with the taxable year of such person in which or with which the reviewed year of such publicly traded partnership ends and ending with the taxable year of such person in which or with which the adjustment year of such publicly traded partnership ends.

(6) Other procedures for modification of imputed underpayment.

The Secretary may 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 or appropriate to carry out the purposes of this subsection.

(7) Year and day for submission to Secretary.

Anything required to be filed or submitted under this subsection shall be submitted to the Secretary not later than the close of the 270-day period beginning on the date on which the notice of a proposed partnership adjustment is mailed under section 6231 unless such period is extended with the consent of the Secretary.

(8) Decision of Secretary.

Any modification of the imputed underpayment amount under this subsection shall be made only upon approval of such modification by the Secretary.

(9) Modification of adjustments not resulting in an imputed underpayment.

The Secretary shall establish procedures under which the adjustments described in subsection (a)(2) may be modified in such manner as the Secretary determines appropriate.

(d) Definitions.

For purposes of this subchapter-

(1) Reviewed year.

The term "reviewed year" means the partnership taxable year to which the item being adjusted relates.

(2) Adjustment year.

The term "adjustment year" means the partnership taxable year in which-

(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under section 6234 , such decision becomes final,

(B) in the case of an administrative adjustment request under section 6227 , such administrative adjustment request is made, or

(C) in any other case, notice of the final partnership adjustment is mailed under section 6231 .