TAX SECTION
State Bar of Texas

April 26, 2016

By First Class Mail

Internal Revenue Service
CC:PA:LPD:PR (Notice 2016-23)

Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Comments in Response to Notice 2016-23

Dear Sir/Madam:

On behalf of the Tax Section of the State Bar of Texas, we are pleased to submit the enclosed response to the request by the Treasury Department and the Internal Revenue Service in Notice 2016-23 for comments regarding implementation of the new partnership audit regime enacted as part of the Bipartisan Budget Act of 2015, as corrected and clarified by the Protecting Americans from Tax Hikes Act of 2015.

THE COMMENTS ENCLOSED WITH THIS LETTER ARE BEING PRESENTED ONLY ON BEHALF OF THE TAX SECTION OF THE STATE BAR OF TEXAS. THE COMMENTS SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE OR THE GENERAL MEMBERSHIP OF THE STATE BAR OF TEXAS. THE TAX SECTION, WHICH HAS SUBMITTED THESE COMMENTS, IS A VOLUNTARY SECTION OF MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

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THE COMMENTS ARE SUBMITTED AS A RESULT OF THE APPROVAL OF THE COMMITTEE ON GOVERNMENT SUBMISSIONS OF THE TAX SECTION AND PURSUANT TO THE PROCEDURES ADOPTED BY THE COUNCIL OF THE TAX SECTION, WHICH IS THE GOVERNING BODY OF THAT SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS SECTION HAS BEEN OBTAINED AND THE COMMENTS REPRESENT THE VIEWS OF THE MEMBERS OF THE TAX SECTION WHO PREPARED THEM.

We appreciate being extended the opportunity to assist in the development of the guidance to implement the new partnership audit regime.

Respectfully submitted,

Alyson Outenreath

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COMMENTS ON IMPLEMENTATION OF THE NEW PARTNERSHIP AUDIT REGIME ENACTED AS PART OF THE BIPARTISAN BUDGET ACT OF 2015

These comments ("Comments") on issues to be addressed in guidance to implement the new partnership audit regime (the "Partnership Audit Rules") enacted as part of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74 (the "BBA"), as corrected and clarified by the Protecting Americans from Tax Hikes Act of 2015, Pub. L. 114-113, div. Q (the "PATH Act"), are submitted on behalf of the Tax Section of the State Bar of Texas (the "Tax Section"). The principal drafters of these Comments were Chester W. Grudzinski, Jr., Stephen A. Beck, Brian S. Feiwell, Christopher J. Ohlgart, Hersh M. Verma, and Jacob Birnbaum. The Committee on Government Submissions (COGS) of the Tax Section has approved these Comments. Jeffry M. Blair, Vice Chair of COGS, reviewed these Comments. Mary McNulty also reviewed the Comments and made substantive suggestions on behalf of COGS.

Although members of the Tax Section who participated in preparing these Comments have clients who would be affected by the principles addressed by these Comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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Date: April 26, 2016

These Comments are provided in response to the request of the Treasury Department ("Treasury") and the Internal Revenue Service (the "Service") in Notice 2016-23 (the "Notice"), requesting comments regarding implementation of the Partnership Audit Rules. The BBA repeals the current rules governing partnership audits and replaces them, effective January 1, 2018, with the Partnership Audit Rules, which is a centralized audit regime that generally assesses and collects tax at the partnership level. The Tax Section thanks Treasury and the Service for the opportunity to provide input on the Partnership Audit Rules. We respectfully suggest that Treasury and the Service consider promulgating guidance to address the following issues.

I. THE ELECTION OUT FROM THE PARTNERSHIP AUDIT RULES.

A. Whether a Disregarded Entity is Taken into Account for Purposes of Election Out From the Partnership Audit Rules.

We believe guidance is needed for purposes of determining whether a partnership is eligible to elect out of the Partnership Audit Rules pursuant to Section 6221(b)[1] ("Election Out") if a partner holds its interest in such partnership through a business entity that is disregarded for federal income tax purposes (a "DRE"). Section 6221(b)(1) provides as follows:

> (b) ELECTION OUT FOR CERTAIN PARTNERSHIPS WITH 100 OR FEWER PARTNERS, ETC. – (1) IN GENERAL – This subchapter shall not apply with respect to any partnership for any taxable year if – (A) the partnership elects the application of this subsection for such taxable year, . . . (C) each of the partners of such partnership is an individual, a C corporation, any foreign entity that would be treated as a C corporation were it domestic, an S corporation, or an estate of a deceased partner . . . .

Additionally, the Election Out is only available for partnerships with 100 or fewer partners, and the 100 partner limit is determined by the number of statements under Section 6031(b) (*i.e.*, Schedule K-1s) a partnership furnishes to its partners.[2] The Partnership Audit Rules, however, do not specifically address whether a DRE owning an interest in a partnership would be: (i) treated as a separate entity, and, moreover, as an ineligible type of partner that would automatically cause the partnership to be ineligible for the Election Out; or (ii) separately counted as an additional partner for purposes of the Election Out's 100 partner limit. We

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[1] Unless otherwise indicated, all "Section" references are to the Internal Revenue Code of 1986, as amended (including amendments promulgated under the BBA and the PATH Act).

[2] Section 6221(b)(1)(B). In addition, Section 6221(b)(2)(A) provides a special rule for determining the 100 partner threshold when an S corporation is a partner of a partnership. In the case of a partner that is an S corporation, the partnership will only be treated as meeting the requirements of Section 6221(b) if such partnership includes a disclosure of the name and taxpayer identification number of each person with respect to whom such S corporation is required to furnish a statement under Section 6037(b) for the taxable year of the S corporation ending with or within the partnership taxable year of the Election Out, and the statements such S corporation is required to so furnish are treated as Schedule K-1s by the partnership for the 100 partner threshold under Section 6221(b)(1)(B).

therefore respectfully submit the following suggestions in connection with those two aforementioned issues.

First, with regard to the eligible types of partners, we respectfully suggest that it is appropriate to ignore a DRE's separate existence for purposes of determining whether the partnership in which it is a partner is eligible for the Election Out. This would be consistent with the general treatment of DREs for federal income tax purposes, under which a DRE's separate existence is generally ignored and the DRE is generally treated in the same manner as a sole proprietorship, branch, or division of its owner.[3] A partnership, by disregarding the separate existence of a DRE partner, would not be precluded from availing itself of the Election Out merely because it has one or more individual indirect partners who own an interest in the partnership through a DRE.

We respectfully submit that it is appropriate to disregard the separate existence of a DRE for purposes of the Election Out, notwithstanding that the Service previously ruled in Rev. Rul. 2004-88 that a DRE's separate existence is taken into account for purposes of determining whether a partnership is eligible for the small partnership exception from the partnership audit regime under the Tax Equity and Fiscal Responsibility Act ("TEFRA").[4] The Service's ruling in Rev. Rul. 2004-88 was based on the Treasury Regulations underlying TEFRA, which provide that a partnership is not eligible for the small partnership exception from TEFRA if that partnership has a "pass-thru partner," which includes an S corporation. In contrast, the Partnership Audit Rules provide more flexibility by explicitly: (i) allowing the Election Out by partnerships that have an S corporation as a partner;[5] and (ii) authorizing Treasury to prescribe Election Out Rules that would apply to partnerships with types of partners who are not currently designated as eligible partners under the Election Out's qualification requirements.[6] The additional flexibility provided under the Election Out provides further support for the position that it is appropriate to disregard the separate existence of a DRE partner in determining whether a partnership with a DRE partner is eligible for the Election Out.

In addition, the treatment of DREs under the Subchapter S eligibility requirements supports the position that it is appropriate to disregard the existence of a DRE for purposes of the Election Out. Similar to the Election Out, an entity seeking qualification as an S corporation can only have owners that are within certain qualifying types.[7] With regard to Subchapter S eligibility, the stock of an S corporation that is owned by a DRE is generally treated for federal income tax purposes as though such stock is owned directly by the owner of the DRE.[8] Accordingly, we

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[3] *See* Treas. Reg. § 301.7701-2(a).

[4] *See* Rev. Rul. 2004-88, 2004-2 C.B. 165.

[5] Section 6221(b)(1)(C).

[6] Section 6221(b)(2)(C).

[7] Section 1361(b)(1)(B) provides that, to qualify as an S corporation, all of the corporation's shareholders must be either individuals, estates, certain types of qualifying trusts, or certain tax exempt organizations.

[8] *See, e.g.,* Priv. Ltr. Rul. 201202003 (Jan. 13, 2012) (S corporation permitted to have as its shareholder a DRE wholly owned by an individual); Priv. Ltr. Rul. 201016025 (Apr. 23, 2010) (same).

respectfully submit that it is appropriate to disregard the separate existence of a DRE partner in determining the eligibility of a partnership for the Election Out.

Second, with regard to the 100 partner limit under the Election Out, we respectfully suggest that the separate existence of a DRE should be disregarded and only the owner of the DRE (and not the DRE itself) should be counted as a partner for purposes of the 100 partner limit. Disregarding the DRE for purposes of the 100 partner limit would be consistent with the general treatment of DREs under the federal income tax law. It would also be consistent with the treatment of a DRE under the Subchapter S eligibility requirements, which also impose a 100 owner limit.[9]

The Joint Committee on Taxation (the "JCT"), however, recently released the "General Explanation of Tax Legislation Enacted in 2015," which included an explanation on how the Service's future guidance may treat a partnership with a DRE partner in determining the availability of the Election Out.[10] The JCT explained that a DRE and the DRE's owner should each be taken into account as if each were a Section 6031(b) statement recipient in determining whether the 100 partner limit is met.[11] The JCT provided an example:

> [A]ssume that a partner of a partnership is a disregarded entity such as a State-law limited liability company ("LLC") with only one member, a domestic corporation. Such guidance may provide that the partnership can make the election if the partnership includes (in the manner prescribed by the Secretary) a disclosure of the name and taxpayer identification number of each of the disregarded entity and the corporation that is its sole member, and each of them is taken into account as if each were a statement recipient in determining whether the 100 or fewer statements criterion is met.[12]

The JCT has taken the position that the number of partners is determined by applying both general look-through and regarded entity treatment to DREs because the owner of a DRE is considered a partner (*i.e.*, look-through treatment) and the DRE is considered a partner (*i.e.*, regarded treatment) for determining the number of partners for the 100 partner limit.

In contrast to the JCT's position, we respectfully suggest that the Service view the owner of a DRE partner as the only "partner" for purposes of the 100 partner limit. This is appropriate because the 100 partner limit is determined based on the number of Schedule K-1s (or its equivalent) issued by the partnership and its partners. There does not appear to be any federal

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[9] The maximum 100 shareholder limit is imposed under Section 1361(b)(1)(A). Of note, for purposes of this 100 shareholder limit, stock owned by members of a family is treated as owned by one shareholder and, for purposes of this rule, a DRE owned by a member of a family is itself treated as a member of the family. *See* Treas. Reg. § 1.1361-1(e)(3)(ii)(F).

[10] "General Explanation of Tax Legislation Enacted in 2015," The Staff of the Joint Committee on Taxation, 114th Congress, 2nd Session, JCS-1-16 (March 2016) (the "JCT Report").

[11] *See id.* at 60.

[12] *Id.* at 60.

income tax authority that would require a partnership with a DRE partner to issue separate Schedule K-1s to both the DRE partner and the owner of that DRE partner.[13] Indeed, the issuance of separate Schedule K-1s to the DRE and its owner reporting the same allocable share of partnership income would cause confusion because the separate Schedule K-1s would incorrectly suggest that both the DRE and its owner should report and pay tax on the same allocable share. Because only one Schedule K-1 is appropriately issued with respect to a DRE partner, we do not see any rationale that would support the treatment of both the DRE and its owner as separate partners of the partnership for purposes of the 100 partner limit.

We also respectfully suggest that the same proposals that we have made with respect to the treatment of DRE partners should also apply to partners that are grantor trusts for purposes of determining a partnership's eligibility for the Election Out. Similar to a DRE, a grantor trust is generally disregarded as separate from its grantor for federal income tax purposes under Sections 671 to 679. In addition, as with a DRE, a grantor trust is generally disregarded as a shareholder separate from its grantor for purposes of the Subchapter S eligibility requirements.[14]

B. Whether the Election Out is Available to Partnerships Owned by Partners Not Explicitly Listed in Section 6221(b)(1)(C).

As discussed above, Section 6221(b)(1)(C) provides that the Election Out is available only for partnerships that have partners consisting solely of: (i) individuals; (ii) C corporations; (iii) foreign entities that would be treated as a C corporation if they were domestic; (iv) S corporations; and (v) estates of deceased partners. Under the plain language in Section 6221(b)(1)(C), the Election Out is not available to partnerships with partners not included in the statutory list, such as trusts or partnerships. For example, under the plain language in Section 6221(b)(1)(C), a lower-tier partnership would be ineligible for the Election Out, even if the partners of that lower-tier partnership were comprised of one individual and a single upper-tier partnership, with that upper-tier partnership having only two individuals as its partners.

For purposes of the Election Out, S corporations are permitted partners only if certain disclosures are made to the Internal Revenue Service in accordance with Section 6221(b)(1)(C). Section 6221(b)(2)(C) authorizes Treasury to prescribe rules similar to those applying to S corporations for other types of partners that are not specifically listed in Section 6221(b)(1)(C) as permissible partners for purposes of the Election Out. This authorization by Congress gives Treasury the ability to expand the categories of permissible partners and provide more partnerships the ability to avail themselves of the Election Out. The JCT has also suggested that further guidance may

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[13] In the situation in which a person owns an interest in a partnership as nominee for another person who is the beneficial owner of that partnership interest, the Treasury Regulations provide that the partnership is obligated to issue a Schedule K-1 to either the nominee or the beneficial owner, but not both. *See* Temp. Treas. Reg. § 1.6031(b)-1T(a)(2).

[14] *See* Treas. Reg. § 1.1361-1(e)(1) ("if stock is held by a subpart E trust . . . the deemed owner of the trust is considered to be the shareholder."); Treas. Reg. § 1.1361-1(e)(3)(E) (grantor trust is treated as a family member if the deemed owner of that trust is a member of that family).

provide rules allowing for the Election Out by a partnership that has one or more partners that are also partnerships.[15]

Accordingly, we suggest that Treasury prescribe rules that would provide limited eligibility for the Election Out by partnerships with partners that are trusts or upper-tier partnerships in situations in which the Election Out would not impair the Service's ability to efficiently conduct audits. We suggest that the rules in Section 6221(b)(2)(A), which apply to partnerships with S corporation partners, could be modified to provide an acceptable methodology for allowing a limited Election Out by partnerships with partners that are trusts or upper-tier partnerships.

For example, Treasury could provide that a lower-tier partnership with an upper-tier partnership as its partner would be eligible for the Election Out, provided that the following three requirements are satisfied. First, the lower-tier partnership would be required to provide the Service with the name and taxpayer identification number of each of its direct and indirect owners. Second, the total number of Schedule K-1s (or its equivalent) required to be issued by the lower-tier partnership and its direct and indirect owners would be limited to no more than 100 (or some lesser number). Third, an upper-tier partnership that is a partner of the lower-tier partnership could not have any partners that are themselves partnerships (i.e., the lower-tier partnership would not be eligible for the Election Out if it was indirectly owned by any partnership).

In this manner, small tiers of partnerships could be eligible for the Election Out, without impairing the ability of the Service to perform its audit function. In addition, partnerships with different types of "flow-through" entities as partners would receive equivalent treatment under the Election Out.

C. Whether Spouses in a Community Property Jurisdiction Would be Counted Separately for Purposes of the 100 Partner Limit.

Under the community property laws recognized in many states, the property acquired during marriage by either spouse is generally treated as owned in equal shares by both spouses under state law.[16] As a result, if each spouse's community property ownership of an interest in a partnership is taken into account for purposes of the 100 partner limit, a partnership with one or more partners who are married individuals could be ineligible for the Election Out. This could result in differences in the treatment of partnerships organized in different states. A partnership with one or more partners who are married individuals not subject to community property law could be eligible for the Election Out, whereas another partnership with the same number of partners who are married individuals may not be eligible for the Election Out by reason of the 100 partner limit if those partners are subject to community property law.

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[15] JCT Report at 60-61.

[16] *See, e.g.*, Tex. Fam. Code Ann. § 3.002 ("Community property consists of the property, other than separate property, acquired by either spouse during marriage").

To prevent this differing treatment, we respectfully request that Treasury promulgate rules to provide that a partnership interest owned by a married couple will be treated as owned by a single person for purposes of the 100 partner limit. This rule would be consistent with the treatment of a married couple as a single shareholder for purposes of the 100 shareholder limit for S corporation eligibility.[17]

II. APPLICATION OF THE PARTNERSHIP AUDIT RULES TO CONSTRUCTIVE PARTNERSHIPS.

The Notice requests comments on any issues relevant to the implementation of the Partnership Audit Rules, including issues not specifically identified in the Notice. In response to this request, we ask that the Service and Treasury address how the Partnership Audit Rules will apply to constructive tax partnerships that are not juridical entities for state law purposes. For instance, a joint operating agreement ("JOA") between co-owners of oil and gas properties usually creates a constructive tax partnership for federal income tax purposes, but there is no juridical entity for state law purposes, including a general partnership.[18]

Generally, the Partnership Audit Rules provide that any taxes resulting from adjustments "shall be assessed and collected . . . at the partnership level."[19] To be excluded from entity-level taxation, a partnership may make one of two elections. First, Section 6221(b) provides an Election Out of the entity-level taxation approach only if "the partnership elects the application of this subsection for such taxable year." In many cases, however, the parties to the JOA are partnerships, so an Election Out is not currently possible under the Partnership Audit Rules in that situation, as discussed above. Second, a partnership may make a timely election to push out adjustments to each partner (the "Alternative Method").[20] Consequently, unless a partnership voluntarily chooses to make either election, the Service can only impose taxation at the partnership level.[21] However, without a state law entity that holds assets, any tax assessed at the constructive partnership level is fruitless since there is no juridical entity with assets against which the Service could seek enforcement.

Accordingly, we request that Treasury promulgate rules to clarify how the Partnership Audit Rules will apply to constructive tax partnerships. With regard to a constructive tax partnership that is subject to Subchapter K of the Internal Revenue Code, we respectfully suggest that Treasury promulgate rules to require a constructive tax partnership to apply the Alternative Method. This would help to ensure that the federal income tax resulting from an audit adjustment with respect to a constructive tax partnership would be assessed upon and collected

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[17] *See* Section 1361(c)(1)(A)(i).

[18] *See* Sections 761(a) and 7701(a)(2).

[19] Section 6221(a).

[20] Section 6226.

[21] The election out of partnership treatment applies only for purposes of Subchapter K of the Internal Revenue Code. Treas. Reg. § 1.761-2. Therefore, a partnership electing out of partnership treatment could still be subject to the Partnership Audit Rules.

from the parties that own (for state law purposes) the assets from which the tax deficiency originated.

With regard to a constructive tax partnership that has elected out of the application of Subchapter K of the Internal Revenue Code pursuant to Section 761(a), we respectfully suggest that Treasury promulgate rules to clarify that such a constructive tax partnership would not be subject to the Partnership Audit Rules. This treatment would be consistent with the statute, which defines a "partnership" for purposes of the Partnership Audit Rules as "any partnership required to file a return under section 6031(a)."[22] A constructive tax partnership that has elected out of the application of Subchapter K generally would not be required to file a return under Section 6031(a)[23] and thus should be excluded from the application of the Partnership Audit Rules.

III. PARTNERSHIP REPRESENTATIVES

Under the Partnership Audit Rules, a partnership no longer designates a "tax matters partner" (a "TMP"). Instead, a partnership must designate a "partnership representative" (the "Partnership Representative") who handles tax matters with the Service.[24] The Partnership Representative is the only person who has authority to act on behalf of a partnership during a partnership audit.[25] Notably, the Partnership Representative's actions are binding on all former and current partners.[26] As such, the designation of the Partnership Representative is of higher significance than the designation of the TMP.

The Partnership Representative must be a "partner (or other person) with a substantial presence in the United States."[27] If a partnership has not designated a Partnership Representative, the Service has the authority to select *any person* as the Partnership Representative.[28] This rule is a departure from the partnership audit regime under TEFRA, under which only a partner can act as TMP.[29] Under TEFRA, when a partnership has not designated a TMP, the general partner with the largest profits interest is automatically designated as the TMP.[30] We suggest that Treasury adopt a similar principal under the Partnership Audit Rules and automatically designate the general partner or, if a partnership does not have a general partner, the partner with the largest profits interest that has a substantial presence in the United States as the Partnership Representative when the partnership has not designated a Partnership Representative.

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[22] Section 6241(1).
[23] *See* Treas. Reg. § 1.6031(a)-1(c)(1)(ii).
[24] Section 6223(a).
[25] *Id.*
[26] Section 6223(b).
[27] Section 6223(a).
[28] *Id.*
[29] Treas. Reg. §§ 301.6231(a)(7)-1(b)(1).
[30] Section 6231(a)(7)(B) (Pre-2018).

In addition, the Partnership Audit Rules are unclear about what happens when a partnership with no partner having a substantial presence in the United States fails to designate a Partnership Representative. In such case, the Service would designate a person with a substantial U.S. presence to act as the Partnership Representative, but it is uncertain whom the Service would designate.

As a result, we respectfully request that Treasury promulgate rules to clarify that a person with a substantial U.S. presence who is not a partner of a partnership may be selected to act as the Partnership Representative of that partnership in the situation in which the partnership does not designate its own Partnership Representative and none of its partners have a substantial U.S. presence. We respectfully suggest that Treasury would generally select the Partnership Representative from among the following persons, provided that the person selected has consented to serve as the Partnership Representative: (i) any person with a substantial U.S. presence who is authorized to sign the partnership's U.S. income tax return; (ii) a representative of the partnership who has a substantial U.S. presence and authority to conduct or oversee the partnership's activities giving rise to U.S. income taxation; (iii) a U.S. law firm or U.S. accounting firm engaged by the partnership; or (iv) the partnership's registered agent for service of process located within the U.S.

In addition, we respectfully suggest that any criteria involving the selection of a Partnership Representative should require the consent of the person so selected. A person's service as Partnership Representative may involve balancing various parties' interests (which interests may not be aligned) and may raise or involve a myriad of issues including indemnification, cost, and privilege. For these reasons, we respectfully suggest that Treasury promulgate rules to clarify that a person does not have to serve as Partnership Representative unless that person consents to do so.

The Partnership Audit Rules also do not provide guidance for who may act on behalf of an entity that is the Partnership Representative. We request that Treasury provide such guidance, specifically addressing the types of individuals who will be authorized to act in federal income tax matters on behalf of an entity that is the Partnership Representative. We suggest that the person so designated could be: (i) any person authorized to sign the entity's federal income tax return; or (ii) any person who has the authority under the entity's governing documents to conduct or manage the activities of the entity.

Moreover, the Partnership Audit Rules do not contain authority regarding replacement of the Partnership Representative when the Partnership Representative has either been designated by the partnership or by the Service. We suggest that Treasury clarify that a partnership can replace the Partnership Representative, regardless of whether the Partnership Representative is designated by the partnership or the Service. Additionally, we suggest that Treasury clarify whether the partners may replace the Partnership Representative at any time, including after the commencement of an audit.

IV. PARTNERSHIP LEVEL ASSESSMENT UNDER SECTION 6225.

A. What are the Tax Effects of the Partnership Level Adjustment to the Adjustment Year Partners?

The general rule under the Partnership Audit Rules is that a partnership is liable to pay "in the adjustment year" any imputed underpayment resulting from the adjustment made to the income of that partnership.[31] This general rule imposing and collecting the imputed underpayment at the partnership level is hereafter referred to as the "General Method."

Under the General Method, the partners of the partnership for the "adjustment year" (generally, the partnership taxable year in which the audit is finally resolved) bear the economic burden of the tax liability resulting from that adjustment, notwithstanding the possibility that a different set of partners[32] may have received one or more tax benefits for the partnership taxable year that was subject to review. The "adjustment year" as defined in Section 6225(d)(2) is hereinafter referred to as the "Adjustment Year," and the partners of the partnership for the Adjustment Year are the "Adjustment Year Partners." The partnership tax year that was subject to review is hereinafter referred to as the "Reviewed Year," and the partners of the partnership for the Reviewed Year are the "Reviewed Year Partners." The adjustment to the partnership's tax items, and the partnership's payment of tax, interest and penalties relating to those adjustments, presumably would have continuing income tax effects to the Adjustment Year Partners through their amounts of outside basis and capital accounts. The Partnership Audit Rules, however, do not elaborate on how those continuing income tax effects are determined.

We therefore respectfully request that Treasury promulgate rules and examples explaining and illustrating the manner in which the partnership level adjustment and payment of tax, interest and penalties will be taken into account in determining the future income tax effects for the Adjustment Year Partners. In addition, we have included in these Comments the following simplified fact pattern and suggested approach regarding the manner in which the partnership level adjustment and payment of tax, interest and penalties should impact the outside bases and capital accounts of the Adjustment Year Partners in a typical scenario. The following fact pattern is hereafter referred to as the "Example."

> Example: In 2018, two individuals, "A" and "B," each owns 50% of the capital and profits interests of a partnership. For the 2018 tax year, the partnership reports a deduction of $1 million, one-half of which is allocated to each of A and B.

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[31] Section 6225(a)(1).

[32] Of note, a different set of partners can result from scenarios beyond transfers of partnership interests, including without limitation the admission of new partners or the withdrawal of existing partners. As a general consideration, forthcoming guidance from the Treasury under the Partnership Audit Rules should address these scenarios as well.

In 2019, A sells her interest to an individual, "C," for an amount in excess of her outside basis. A reports a taxable gain from this sale on her 2019 income tax return. C succeeds to A's capital account in the partnership.

In 2020, the Service makes an adjustment to the income of the partnership by disallowing the $1 million deduction that was claimed in 2018. This results in an imputed underpayment for 2020 in the amount of $396,000 (i.e., the $1 million positive adjustment, multiplied by an assumed maximum individual tax rate in 2018 of 39.6%).

Under the Partnership Audit Rules, the partnership is liable in 2020 for additional tax that would have resulted from a positive $1 million adjustment to the partnership's taxable income in 2018. Because the partnership is liable for that additional tax in the Adjustment Year, B and C are essentially sharing the economic burden of the increased tax burden attributable to that $1 million adjustment and should be entitled to take into account the effect of the $1 million adjustment and the partnership's payment of the imputed underpayment in their outside bases and capital accounts. Assuming that B and C have agreed to share the economic impact of all partnership items equally, they each presumably would be allocated one-half of the $1 million adjustment (or $500,000 each). Accordingly, each of B and C presumably would be entitled to increase the amount of her outside basis and capital account by $500,000.[33] In addition, if the partnership paid tax, interest and penalty in connection with the imputed underpayment in the total combined amount of $500,000, B and C would presumably reduce the amount of their outside basis and capital account by $250,000 each.[34]

As an additional consideration, under the General Rule, in certain instances, the proper treatment of an adjustment on the books of the partnership may be to create or restore one or more assets (in whole or in part). Additional guidance from the Treasury may be necessary to address subsequent allocations of items of income, gain, deduction, loss, and credit with respect to such assets. For example, the disallowance of a deduction would typically result in the addition of or to an asset and such additional amount may be subject to depreciation or amortization (e.g., start-up costs).

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[33] *See* Section 705(a)(1)(A); Treas. Reg. § 1.704-1(b)(2)(iv)(*b*)(*3*).

[34] *See* Section 705(a)(2)(B); Treas. Reg. § 1.704-1(b)(2)(iv)(*b*)(*6*). The suggested reduction of B's and C's outside bases to account for the partnership's payment of the imputed underpayment is similar to the effect of an S corporation's payment of the Section 1374 built-in gain tax on its shareholders. Under Section 1366(f)(2), the amount of Section 1374 built-in gain tax paid by an S corporation is treated as a loss sustained by that S corporation, which thereby generally results in a decrease in the shareholders' outside bases under Section 1367(a)(2).

B. What are the Tax Effects if a Reviewed Year Partner Files an Amended Return and Pays a Portion of the Tax Relating to the Imputed Underpayment?

One or more Reviewed Year Partners may file an amended return for the Reviewed Year to report and pay the tax resulting from their allocable share of the adjustments made to the partnership's tax items (the "Amended Return Exception").[35] Under the Amended Return Exception, the amount of the imputed underpayment imposed on the partnership is reduced to the extent the Reviewed Year Partners file amended returns for the Reviewed Year to report their allocable share of the adjustments and pay their income tax liability relating to those adjustments.[36]

We respectfully request that Treasury promulgate rules and examples to explain and illustrate the federal income tax effects to the parties where only some of the Reviewed Year Partners file amended returns reporting the adjustments and pay the related tax. The following is a suggested approach (elaborating on the Example).

> Assume the same facts as in the Example, except that A files an amended return for 2018 reporting her 50% share of the partnership adjustment (or $500,000) and paying the tax resulting from that adjustment. As a result of A's amended return, the partnership's imputed underpayment amount is reduced to take into account the $500,000 adjustment that was reported on A's amended return. Accordingly, the imputed underpayment would equal $198,000 (i.e., the remaining $500,000 adjustment, multiplied by an assumed 39.6% maximum individual tax rate in 2018).
>
> The manner in which the remaining $500,000 adjustment would be allocated among B and C generally depends on the manner in which they agree to allocate partnership items of income, gain, loss, deduction, and credit in their partnership agreement. Assuming that they have agreed to allocate all partnership items equally, then $250,000 (i.e., one-half of the $500,000 adjustment) would be allocated to each of them, increasing each of their outside basis and capital account by that amount.[37]
>
> In addition, if the partnership paid tax, interest and penalty in connection with the imputed underpayment in the total combined amount of $250,000, B and C would, in the absence of any permitted special allocations, reduce the amount of their outside basis and capital account by $125,000 each.[38]

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[35] Section 6225(c)(2).

[36] *See id.*

[37] *See* Section 705(a)(1)(A); Treas. Reg. § 1.704-1(b)(2)(iv)(*b*)(*3*).

[38] *See* Section 705(a)(2)(B); Treas. Reg. § 1.704-1(b)(2)(iv)(*b*)(*6*).

Furthermore, A's amended 2018 return reporting her allocable share of the partnership adjustment and the related tax payment potentially impacts her 2019 income tax liability. If A reports and pays tax on the $500,000 adjustment on her amended 2018 income tax return, A should increase the tax basis of her partnership interest, which she sold for a gain in 2019. If the statute of limitations for her 2019 tax year is still open under Section 6511, A can file an amended 2019 income tax return to claim a refund resulting from the increased basis in her partnership interest that was sold. If the statute of limitations for filing a refund claim has closed, however, A may be left without recourse for her 2019 tax year. As a result, we suggest that it would be equitable for Treasury to promulgate rules to provide a procedure through which A could receive the tax benefit from her increased basis in the partnership interest, even in situations in which the limitations period has expired, perhaps under the mitigation rules of Sections 1311 to 1314.

Under these facts, B's and C's capital account and outside basis would be reduced by the same amounts as a result of the partnership's payment of the $250,000 tax-related liability, even though C succeeded to A's capital account and A separately made a payment of tax. This appears to be an inequitable result because C essentially stepped into A's shoes as a partner in the partnership. This result could be addressed through a special allocation by the partnership of most of its (non-deductible) $250,000 loss resulting from its tax-related payment entirely to B. Due to potential circumstances similar to this one, we suggest that Treasury promulgate rules clarifying that, under the Amended Return Exception, certain special allocations by partnerships relating to certain tax-related payments made by partnerships should be treated as having economic effect.

Moreover, under the Amended Return Exception (as is the case under the General Rule), in certain instances, the proper treatment of an adjustment on the books of the partnership may be to create or restore one or more assets (in whole or in part). Additional guidance from the Treasury may be necessary to address subsequent allocations of items of income, gain, deduction, loss, and credit with respect to such assets.

C. Under the Amended Return Exception, Could the Section 6511 Statute of Limitations Prevent a Partner From Filing an Amended Return to Claim a Refund?

Under the Amended Return Exception, the language in Section 6225(c)(2) addressing the filing of amended returns by the Reviewed Year Partners explicitly states that those amended returns may be filed notwithstanding Section 6511. This indicates that a Reviewed Year Partner is eligible to file an amended return claiming a refund with respect to the partnership's Reviewed Year, even when the statute of limitations for claiming a refund with respect to the Reviewed Year would have expired. The BBA and Path Act, however, did not amend Section 6511 to provide an exception for a Reviewed Year Partner filing an amended return pursuant to the Amended Return Exception. As a result, we respectfully request that Treasury promulgate a rule (perhaps as an amendment to the regulations underlying Section 6511) to make clear that a partner filing an amended return pursuant to the Amended Return Exception is eligible to claim a

refund on that return, even in situations in which the limitations period Section 6511 otherwise would have expired.

D. How are Penalties and Interest Calculated and Imposed Under the Amended Return Exception?

Section 6233 provides the general rule that interest and penalties relating to an imputed underpayment are imposed and collected at the partnership level. The Partnership Audit Rules, however, do not contain any language clearly resolving who is liable for the interest and any penalties resulting from a partnership adjustment if the Reviewed Year Partners file amended returns reporting their allocable shares of that adjustment and paying their related tax liabilities. This is in contrast to the rules under the Alternative Method, which explicitly provide that interest and penalties will be owed at the partner level.[39]

As a result, we respectfully request that Treasury promulgate rules to address the calculation of, and liability for, interest and penalties in the scenario in which the Reviewed Year Partners file amended returns to report and pay the tax in connection with their allocable shares of the partnership adjustment. We make the following recommendations: First, the amount of the interest and penalties would be determined at the partnership level in the same manner as though no amended partner returns were filed. Second, any Reviewed Year Partner filing an amended return could elect to pay her or its allocable share of the amount of interest and penalty determined at the partnership level. Third, any interest and/or penalties paid by a Reviewed Year Partner would be credited against the amount of interest and penalties owed by the partnership. Fourth, to the extent the interest and penalties resulting from the partnership adjustment are not paid by the Reviewed Year Partners, the interest and penalties would still be collectible against the partnership.

V. THE ALTERNATIVE METHOD UNDER SECTION 6226.

A. What are the Income Tax Effects of the Partner-Level Adjustments to the Reviewed Year Partners?

As with the General Method, it would be helpful for Treasury to promulgate rules and examples explaining and illustrating the income tax effects of the partner-level adjustments on the Reviewed Year Partners if the Alternative Method is elected under Section 6226. The following is our suggested approach (elaborating on the Example).

> Assume the same facts as in the Example, except that the partnership complies with the requirements for electing the Alternative Method. A and B agreed to share the economic impact of all partnership items equally. As a result, the $1 million adjustment relating to the disallowed deduction would be made in equal

[39] Section 6226(c).

shares of $500,000 to each of A and B.[40] Each of A's and B's income tax liability for their 2020 tax years would be increased by the amount by which their income tax liability for 2018 would have increased if the $500,000 adjustment was made in 2018.[41]

For B, who remained a partner in the partnership through 2020, the tax effects seem relatively clear. The positive $500,000 adjustment presumably would increase the amount of her outside basis and capital account balance in the partnership.[42]

The tax effects of the adjustment to A, however, are completely uncertain because Section 6226(b) contains language that leads to contradictory results. On the one hand, Section 6226(b)(3) provides that, in calculating the increase in the Reviewed Year Partner's tax liability for the Adjustment Year, the Reviewed Year Partner can take into account any "tax attribute" that would have been affected if the adjustments described in the notice of final partnership adjustment had been taken into account for the Reviewed Year. The meaning of the term "tax attribute" for purposes of Section 6226(b)(3) is unclear, but presumably the term would include a partner's outside basis in their partnership interest as determined under Section 705. Assuming that is the case, Section 6226(b)(3) suggests that, when A calculates the increase in her 2020 tax liability resulting from the $500,000 adjustment made to her 2018 tax year, she can take into account that her outside basis would have increased by $500,000 as a result of that adjustment, decreasing her taxable gain from the sale of the partnership interest in 2019 by $500,000.

On the other hand, Section 6226(b)(2) provides that a Reviewed Year Partner can only take into account the amount by which that partner's tax liability would "increase" for the Reviewed Year (i.e., 2018 under the Example) and any affected year (i.e., 2019 under the Example) in calculating the increase in the Reviewed Year Partner's tax liability for the Adjustment Year (i.e., 2020 under the Example). This suggests that A would not be able increase her outside basis in 2018 to reduce her tax liability in 2019 (resulting from her sale of her partnership interest in 2019), in determining the increase in her tax liability for 2020 resulting from the adjustment.

If A is required to increase her 2020 income tax liability by taking into account the $500,000 positive adjustment in her 2018 income, but receives no credit for that $500,000 adjustment in her outside basis to reduce her taxable gain from the sale in 2019, A is essentially taxed twice on the same $500,000 adjustment. To

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[40] Section 6226(a).

[41] Section 6226(b).

[42] *See* Section 705(a)(1)(A); Treas. Reg. § 1.704-1(b)(2)(iv)(*b*)(*3*).

reach a conceptually correct result, A should be able to take into account both her increased outside basis and the resulting decrease in her 2019 tax liability in calculating the increase in her 2020 tax liability resulting under the Alternative Method.

We respectfully request that Treasury promulgate rules and examples to explain and illustrate the interplay between Sections 6226(b)(2) and (3) in a manner that reaches the conceptually correct result of preventing a Reviewed Year Partner from being taxed twice as a result of a single adjustment.

In addition, the aforementioned scenario illustrates a broader problem. The inability of a Reviewed Year Partner to take into account any decrease in that partner's tax liability for the Reviewed Year and any other affected year naturally leads to situations in which a Reviewed Year Partner is required to pay more tax than that partner otherwise would owe under the general application of the federal income tax laws. Moreover, a Reviewed Year Partner's artificially increased income tax liability is the result of an election to utilize the Alternative Method that is made by the partnership. The applicable Reviewed Year Partner may no longer be a partner in the partnership by the Adjustment Year and thus may have no input whatsoever regarding whether the partnership elects the Alternative Method.

As a result of these conceptual and fairness issues, we respectfully request that Treasury exercise its authority and discretion to promulgate rules that would enable Reviewed Year Partners, in calculating the amount of the increase in their tax liability for the Adjustment Year under Section 6226, to take into account any decrease in their tax liability for the Reviewed Year and any affected year that would result from the adjustments made in the notice of final partnership adjustment. Alternatively, we respectfully request that Treasury promulgate rules to make clear that a Reviewed Year Partner subjected to the Alternative Method may file a claim for refund for the Reviewed Year or any affected year, notwithstanding whether the limitations period under Section 6511 has expired.

Lastly, under the Alternative Method (as is the case under the General Rule and the Amended Return Exception), in certain instances, the proper treatment of an adjustment on the books of the partnership may require the creation or restoration of one or more assets (in whole or in part). Accordingly, we respectfully request that the Treasury consider issuing additional guidance as may be necessary to address subsequent allocations of items of income, gain, deduction, loss, and credit with respect to such assets.

B. How Would the Partner-Level Adjustment be Taken into Account by Indirect Partners?

We respectfully request that Treasury promulgate rules and examples to explain and illustrate the manner in which the Alternative Method would apply in a tiered partnership scenario. For example, assume the same facts as in the Example, except that B is a partnership with two individual partners, "D" and "E," who each have a 50% interest in the capital and profits of B. The Service makes an adjustment to the income of the lower-tier partnership in 2020 by

disallowing the $1 million deduction that was claimed in 2018. The lower-tier partnership timely and effectively elects to use the Alternative Method. As a result, B presumably would be required to take into account its $500,000 allocable share of the adjustment made in the notice of final partnership adjustment ("FPA") issued to the lower-tier partnership.

Under the Alternative Method, the income tax liability of each partner who was a partner in the partnership for the Adjustment Year is increased by the amount by which their income tax liability for the Reviewed Year and any affected year would have increased if the partnership adjustment had been made in the Reviewed Year.[43] But B is a "flow-through" entity that generally is not required to pay federal income tax. As a result, the statutory language of the Alternative Method, as elected by a lower-tier partnership, may not apply to a partner that is itself a partnership. It is therefore unclear how the upper-tier partnership would be required to take into account the adjustment that was made to the lower-tier partnership that has elected the Alternative Method.

One possibility is that the upper-tier partnership could be required under the General Method to pay an imputed underpayment in the Adjustment Year in connection with that upper-tier partnership's allocable share of the adjustment made to the lower-tier partnership. In that scenario, B would be required in 2020 to pay an imputed underpayment equal to $198,000 (i.e., B's $500,000 allocable share of the adjustment made to the lower-tier partnership, multiplied by an assumed 39.6% maximum individual tax rate in 2018). D and E presumably would increase the amount of their outside basis and capital account in B by their $250,000 allocable share of the adjustment.[44] D and E would also presumably decrease the amount of their outside basis and capital account in B by their $99,000 allocable share of B's payment of tax resulting from the adjustment.[45]

It is unclear whether, in a tiered partnership scenario, an upper-tier partnership could elect the Alternative Method in connection with its allocable share of an adjustment that was made to a lower-tier partnership that elected the Alternative Method. The JCT Report, however, indicates that an upper-tier partnership may file an administrative adjustment request ("AAR") under Section 6227 with regard to its allocable share of an adjustment made to the lower-tier partnership.[46] The upper-tier partnership's filing of the AAR may enable the upper-tier partnership to achieve essentially the same result as the Alternative Method by causing the partners of the upper-tier partnership to take into account their allocable shares of the upper-tier partnership's allocable share of the adjustment that was made at the lower-tier partnership level.[47]

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[43] Section 6226(b).

[44] *See* Section 705(a)(1)(A); Treas. Reg. § 1.704-1(b)(2)(iv)(*b*)(*3*).

[45] *See* Section 705(a)(2)(B); Treas. Reg. § 1.704-1(b)(2)(iv)(*b*)(*6*).

[46] *See* Report at 71.

[47] *See* Section 6227(b)(2).

We respectfully suggest that Treasury promulgate rules to make clear that an upper-tier partnership may elect to apply the Alternative Method in connection with its allocable share of an adjustment made to a lower-tier partnership. We also suggest that those rules could provide that an upper-tier partnership may elect to apply the Alternative Method, without filing an AAR, by timely filing an election and providing its partners with the required information regarding their allocable shares of the adjustment, consistent with the requirements under Section 6226(a).

C. How Would Penalties be Determined Under the Alternative Method?

Section 6226(c)(1) provides that any penalties, additions to tax, or additional amount will be determined as provided under Section 6221, which in turn provides that the applicability of any penalty, addition to tax, or additional amount relating to a partnership adjustment will be determined at the partnership level. Nevertheless, Section 6226(c)(1) provides that the Reviewed Year Partners are liable for any such penalties, additions to tax or additional amounts.

We respectfully request that Treasury promulgate rules to explain how penalties and similar items are calculated and imposed under the Alternative Method. For example, if the applicability of the substantial understatement penalty under Section 6662(b)(2) is determined at the partnership level, we assume that determination would generally be made based on whether the amount of taxable income that was not reported on the partnership's Internal Revenue Service Form 1065 ("Form 1065") exceeds 10% of the taxable income required to be shown on that Form 1065.[48] In addition, although the applicability of a penalty is determined at the partnership level, we assume that the amount of the penalty imposed on the Reviewed Year Partner would be based on the amount of that Reviewed Year Partner's underpayment attributable to the substantial understatement. Clarification of these and other issues relating to the operation of the penalty rules under the Alternative Method would be helpful.

VI. PARTNERSHIP ADMINISTRATIVE ADJUSTMENT REQUESTS.

The Partnership Audit Rules are unclear regarding whether a partner can ever obtain a refund in connection with an AAR. Section 6227(a) provides: "A partnership may file a request for an administrative adjustment in the amount of one or more items of income, gain, loss, deduction, or credit of the partnership for any partnership taxable year." Section 6227(b) provides that, if the adjustment relating to the AAR would not result in an imputed underpayment, then that adjustment is made under "rules similar to the rules of" the Alternative Method. Under the Alternative Method, however, the Adjustment Year Partners determine the amount of their adjustment only by taking into account the "increase" in their tax liability resulting from the adjustments.[49] The statutory language of the Alternative Method does not permit the Adjustment Year Partners to take into account any decrease in their tax liability. Thus, it is questionable under the Partnership Audit Rules whether a partner could ever claim a refund in connection with an AAR.

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[48] *See* Section 6662(d)(1).

[49] Section 6226(b)(2).

As a result, we respectfully request that Treasury promulgate rules to clarify that the partners may take into account adjustments that would decrease their tax liability for the Reviewed Year and any affected year in determining the amount of their tax liability for the Adjustment Year in connection with a AAR. This suggestion is consistent with aspects of the suggested approach set forth above in Section V.A. of these Comments.

VII. PARTNER NOTICE RIGHTS.

Section 6231 requires that Treasury mail to the "partnership and partnership representative" notice of any administrative proceeding initiated at the partnership level, notice of any proposed partnership adjustment, and notice of any final partnership adjustment. The Partnership Audit Rules, however, do not contain any statutory obligation on the part of any party to provide notice to the partners of the partnership or otherwise keep them informed of the partnership audit.

This is in contrast to the TEFRA rules, which provide that the Secretary generally must provide notice to each partner regarding the beginning of an administrative proceeding at the partnership level and the final partnership administrative adjustment resulting from that proceeding.[50] The TEFRA rules also provide that the Tax Matters Partner "shall keep each partner informed of all administrative and judicial proceedings" relating to the adjustment at the partnership level.[51]

The partners of the partnership, however, are in as much need of information relating to the partnership proceeding under the Partnership Audit Rules as they are under the TEFRA rules. This is because the Partnership Audit Rules provide that the Partnership Representative is the only person who has authority to act on behalf of a partnership during a partnership audit, and the Partnership Representative's actions are binding on all former and current partners.[52] In contrast, under the TEFRA rules, any partner has the right to participate in any administrative proceeding relating to an adjustment at the partnership level,[53] and the Tax Matters Partner has only limited ability to bind other parties during the administrative phase of a partnership proceeding.[54]

Due to the heightened need under the Partnership Audit Rules for the sharing of information with the partners, we respectfully request that Treasury promulgate rules that require the Partnership Representative to keep the Adjustment Year Partners informed regarding important steps of the proceeding to the same extent as is presently required under the TEFRA rules.

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[50] Section 6223(a) (Pre-2018).
[51] Section 6223(g) (Pre-2018).
[52] Section 6223.
[53] Section 6224(a) (Pre-2018).
[54] Section 6224(c)(3) (Pre-2018).

VIII. JUDICIAL REVIEW OF PARTNERSHIP ADJUSTMENTS.

Section 6234(a) provides that the partnership may file a petition for readjustment with the Tax Court, relevant U.S. District Court, or Court of Federal Claims, within 90 days after the date of mailing of the notice of final partnership adjustment. A partnership may file the petition for readjustment in U.S. District Court or the Court of Federal Claims, however, only if the partnership "deposits with the Secretary, on or before the date the petition is filed, the amount of the imputed underpayment (as of the date of the filing of the petition) if the partnership adjustment was made as provided by the notice of final partnership adjustment."[55]

We respectfully request that Treasury promulgate rules to explain the operation of the aforementioned deposit requirement under the Amended Return Exception when the Reviewed Year Partners have filed amended returns and paid at least a portion of the taxes due as a result of the partnership adjustments. The Reviewed Year Partners' tax payments are taken into account in determining the partnership's imputed underpayment amount.[56] Accordingly, the Reviewed Year Partners' payment should also reduce the amount of the partnership's required deposit in order to obtain review by the District Court or Court of Federal Claims. It would be helpful if Treasury would promulgate rules clarifying that the amount of the partnership's deposit requirement is reduced to take into account tax payments made by the Reviewed Year Partners under the Amended Return Exception.

IX. STATUTE OF LIMITATIONS FOR ADJUSTMENT

Section 6235(a) provides the limitations period within which the Service generally must make an adjustment under the Partnership Audit Rules. Section 6235(a) states as follows:

> (a) In General.—Except as otherwise provided in this section, no adjustment under this subpart for any partnership taxable year may be made after the later of—
>
> (1) the date which is 3 years after the latest of –
>
> (A) the date on which the partnership return for such taxable year was filed,
>
> (B) the return due date for the taxable year, or
>
> (C) the date on which the partnership filed an administrative adjustment request with respect to such year under section 6227, or
>
> (2) in the case of any modification of an imputed underpayment under section 6225(c), the date that is 270 days (plus the number of days of any extension consented to by the Secretary under paragraph (7) thereof) after the date on which everything required to be

[55] Section 6234(b)(1).

[56] Section 6225(c)(2).

submitted to the Secretary pursuant to such section is so submitted, or

(3) in the case of any notice of a proposed partnership adjustment under section 6231(a)(2), the date that is 330 days (plus the number of days of any extension consented to by the Secretary under section 6225(c)(7) after the date of such notice.

Thus, the Partnership Audit Rules provide that the Service generally cannot make a partnership adjustment more than 330 days following the date of the notice of proposed partnership adjustment ("NOPPA"). The Partnership Audit Rules, however, do not explicitly establish any timeframe by which the Service must issue the NOPPA. We therefore respectfully request that Treasury promulgate rules to clarify the timeframe within which the NOPPA must be issued. We also respectfully suggest that Treasury promulgate rules to clarify that the issuance of a NOPPA will cause the extension of the statute of limitations for making an adjustment only with respect to the issues addressed in that NOPPA.

We appreciate being extended the opportunity to assist in the development of the guidance to implement the new partnership audit regime and thank you for your consideration with respect to the above suggestions and comments.