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26 U.S. Code Subchapter C - Tax Treatment of Partnership Items

Current through Pub. L. 114-38 (<http://www.gpo.gov/fdsys/pkg/PLAW-114publ38/html/PLAW-114publ38.htm>). (See Public Laws for the current Congress (<http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws>)).

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- ~~§ 6232 – Assessment, collection, and payment (/uscode/text/26/6232)~~
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- ~~§ 6235 – Period of limitations on making adjustments (/uscode/text/26/6235)~~

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The items with lines through them were deleted in the budget bill of 2015. The line highlighted in yellow is the one that contains the exception that we want to be put back in. On a side note how do you delete the definitions section in general?

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PREMIUM

Nicholas George Gounaris Esq (h...)

s.law.cornell.edu/lawyer/nicholas-



Dayton, OH
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PREMIUM

Antony Abboud Esq (https://lawy...)

s.law.cornell.edu/lawyer/antony-



Dayton, OH
(937) 222-1515
(tel:9372221515)



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26 U.S. Code § 6231 - Definitions and special rules

Current through Pub. L. 114-38 (http://www.gpo.gov/fdsys/pkg/PLAW-114publ38/html/PLAW-114publ38.htm). (See Public Laws for the current Congress (http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws).)

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(a) DEFINITIONS For purposes of this subchapter —

(1) PARTNERSHIP

(A) In general

Except as provided in subparagraph (B), the term “partnership” means any partnership required to file a return under section 6031(a).

(B) Exception for small partnerships

(i) In general

The term “partnership” shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election to have subchapter apply

A partnership (within the meaning of subparagraph (A)) may for any taxable year elect to have clause (i) not apply. Such election shall apply for such taxable year and all subsequent taxable years unless revoked with the consent of the Secretary.

(2) PARTNER The term “partner” means —

(A) a partner in the partnership, and

(B) any other person whose income tax liability under subtitle A is determined in whole or in part by taking into account directly or indirectly partnership items of the partnership.

(3) PARTNERSHIP ITEM

The term “partnership item” means, with respect to a partnership, any item required to be taken into account for the partnership’s taxable year under any provision of subtitle A to the extent regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the partnership level than at the partner level.

(4) NONPARTNERSHIP ITEM

The term “nonpartnership item” means an item which is (or is treated as) not a partnership item.

(5) AFFECTED ITEM

The term “affected item” means any item to the extent such item is affected by a partnership item.

(6) COMPUTATIONAL ADJUSTMENT

The term “computational adjustment” means the change in the tax liability of a partner which properly reflects the treatment under this subchapter of a partnership item. All adjustments required to apply the results of a proceeding with respect to a partnership under this subchapter to an indirect partner shall be treated as computational adjustments.

(7) TAX MATTERS PARTNER The tax matters partner of any partnership is —

(A) the general partner designated as the tax matters partner as provided in regulations, or

(B) if there is no general partner who has been so designated, the general partner having the largest profits interest in the partnership at the close of the taxable year involved (or, where there is more than

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This is the section in question. It says that a partnership shall not include with 10 or fewer people This is what we want put back in. This allows people to file their income and expense on their individual returns using schedule f, c, or e.



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~~1 such partner, the 1 of such partners whose name would appear first in an alphabetical listing).~~

~~If there is no general partner designated under subparagraph (A) and the Secretary determines that it is impracticable to apply subparagraph (B), the partner selected by the Secretary shall be treated as the tax matters partner. The Secretary shall, within 30 days of selecting a tax matters partner under the preceding sentence, notify all partners required to receive notice under section 6223(a) of the name and address of the person selected.~~

(8) NOTICE PARTNER

~~The term "notice partner" means a partner who, at the time in question, would be entitled to notice under subsection (a) of section 6223 (determined without regard to subsections (b)(2) and (e)(1)(B) thereof).~~

(9) PASS-THRU PARTNER

~~The term "pass-thru partner" means a partnership, estate, trust, S corporation, nominee, or other similar person through whom other persons hold an interest in the partnership with respect to which proceedings under this subchapter are conducted.~~

(10) INDIRECT PARTNER

~~The term "indirect partner" means a person holding an interest in a partnership through 1 or more pass-thru partners.~~

(11) 5 PERCENT GROUP

~~A 5 percent group is a group of partners who for the partnership taxable year involved had profits interests which aggregated 5 percent or more.~~

(12) HUSBAND AND WIFE

~~Except to the extent otherwise provided in regulations, a husband and wife who have a joint interest in a partnership shall be treated as 1 person.~~

(b) ITEMS CEASE TO BE PARTNERSHIP ITEMS IN CERTAIN CASES

(1) IN GENERAL For purposes of this subchapter, the partnership items of a partner for a partnership taxable year shall become nonpartnership items as of the date—

(A) the Secretary mails to such partner a notice that such items shall be treated as nonpartnership items,

(B) the partner files suit under section 6228(b) after the Secretary fails to allow an administrative adjustment request with respect to any of such items,

(C) the Secretary or the Attorney General (or his delegate) enters into a settlement agreement with the partner with respect to such items, or

(D) such change occurs under subsection (e) of section 6223 (relating to effect of Secretary's failure to provide notice) or under subsection (c) of this section.

(2) CIRCUMSTANCES IN WHICH NOTICE IS PERMITTED The Secretary may mail the notice referred to in subparagraph (A) of paragraph (1) to a partner with respect to partnership items for a partnership taxable year only if—

(A) such partner—

(i) has complied with subparagraph (B) of section 6222(b)(1) (relating to notification of inconsistent treatment) with respect to one or more of such items, and

(ii) has not, as of the date on which the Secretary mails the notice, filed a request for administrative adjustments which would make the partner's treatment of the item or items with respect to which the partner complied with subparagraph (B) of section 6222(b)(1) consistent with the treatment of such item or items on the partnership return, or

(B)

(i) such partner has filed a request under section 6227(d) for administrative adjustment of one or more of such items, and

(ii) the adjustments requested would not make such partner's treatment of such items consistent with the treatment of such items on the partnership return.

(3) NOTICE MUST BE MAILED BEFORE BEGINNING OF PARTNERSHIP PROCEEDING

~~Any notice to a partner under subparagraph (A) of paragraph (1) with respect to partnership items for a partnership taxable year shall be mailed before the day on which the Secretary mails to the tax matters partner a notice of the beginning of an administrative proceeding at the partnership level with respect to such items.~~

Frank Anthony Malocu Esq (http...

s.law.cornell.edu/lawyer/frank-



Dayton, OH

(937) 461-0000

(tel:9374610000)

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P R E M I U M

Nicholas George Gounaris Esq (h...

s.law.cornell.edu/lawyer/nicholas-



Dayton, OH

(937) 222-1515

(tel:9372221515)

Criminal Law, DUI & DWI, Insura...

view website (http://www.gaflrm.com)	email lawyer (https://lawyers.law.cornell.edu/lawyer/nicholas-george-gounaris-esq-484903/contact)	view profile (https://lawyers.law.cornell.edu/lawyer/nicholas-george-gounaris-esq-484903)
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P R E M I U M

Aaron Paul Hartley (https://lawy...

s.law.cornell.edu/lawyer/aaron-



Kettering, OH

(937) 312-9130

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(c) REGULATIONS WITH RESPECT TO CERTAIN SPECIAL ENFORCEMENT AREAS**(1) APPLICABILITY OF SUBSECTION** This subsection applies in the case of—

- (A) assessments under section 6851 (relating to termination assessments of income tax) or section 6861 (relating to jeopardy assessments of income, estate, gift, and certain excise taxes),
- (B) criminal investigations,
- (C) indirect methods of proof of income,
- (D) foreign partnerships, and
- (E) other areas that the Secretary determines by regulation to present special enforcement considerations.

(2) ITEMS MAY BE TREATED AS NONPARTNERSHIP ITEMS

To the extent that the Secretary determines and provides by regulations that to treat items as partnership items will interfere with the effective and efficient enforcement of this title in any case described in paragraph (1), such items shall be treated as nonpartnership items for purposes of this subchapter.

(3) SPECIAL RULES

The Secretary may prescribe by regulation such special rules as the Secretary determines to be necessary to achieve the purposes of this subchapter in any case described in paragraph (1).

(d) TIME FOR DETERMINING PARTNER'S PROFITS INTEREST IN PARTNERSHIP

(1) IN GENERAL For purposes of section 6223(b) (relating to special rules for partnerships with more than 100 partners) and paragraph (11) of subsection (a) (relating to 5-percent group), the interest of a partner in the profits of a partnership for a partnership taxable year shall be determined—

- (A) in the case of a partner whose entire interest in the partnership is disposed of during such partnership taxable year, as of the moment immediately before such disposition, or
- (B) in the case of any other partner, as of the close of the partnership taxable year.

(2) INDIRECT PARTNERS

The Secretary shall prescribe regulations consistent with the principles of paragraph (1) to be applied in the case of indirect partners.

(e) EFFECT OF JUDICIAL DECISIONS IN CERTAIN PROCEEDINGS

(1) DETERMINATIONS AT PARTNER LEVEL No judicial determination with respect to the income tax liability of any partner not conducted under this subchapter shall be a bar to any adjustment in such partner's income tax liability resulting from—

- (A) a proceeding with respect to partnership items under this subchapter, or
- (B) a proceeding with respect to items which become nonpartnership items—
 - (i) by reason of 1 or more of the events described in subsection (b), and
 - (ii) after the appropriate time for including such items in any other proceeding with respect to nonpartnership items.

(2) PROCEEDINGS UNDER SECTION 6228(A)

No judicial determination in any proceeding under subsection (a) of section 6228 with respect to any partnership item shall be a bar to any adjustment in any other partnership item.

(f) SPECIAL RULE FOR DEDUCTIONS, LOSSES, AND CREDITS OF FOREIGN PARTNERSHIPS

Except to the extent otherwise provided in regulations, in the case of any partnership the tax matters partner of which resides outside the United States or the books of which are maintained outside the United States, no deduction, loss, or credit shall be allowable to any partner unless section 6031 is complied with for the partnership's taxable year in which such deduction, loss, or credit arose at such time as the Secretary prescribes by regulations.

(g) PARTNERSHIP RETURN TO BE DETERMINATIVE OF WHETHER SUBCHAPTER APPLIES**(1) DETERMINATION THAT SUBCHAPTER APPLIES**

If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter applies to such partnership for such year but such determination is erroneous, then the provisions of this subchapter are hereby extended to such partnership (and its items) for such taxable year and to partners of such partnership.

~~(2) DETERMINATION THAT SUBCHAPTER DOES NOT APPLY~~

~~If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter does not apply to such partnership for such year but such determination is erroneous, then the provisions of this subchapter shall not apply to such partnership (and its items) for such taxable year or to partners of such partnership.~~

(Added Pub. L. 97-248, title IV ([http://thomas.loc.gov/cgi-bin/bdquery/L?d097:./list/bd/d097pl.lst:248\(Public_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d097:./list/bd/d097pl.lst:248(Public_Laws))), § 402(a), Sept. 3, 1982, 96 Stat. 663 (<http://uscode.house.gov/statviewer.htm?volume=96&page=663>); amended Pub. L. 98-369, div. A, title VII ([http://thomas.loc.gov/cgi-bin/bdquery/L?d098:./list/bd/d098pl.lst:369\(Public_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d098:./list/bd/d098pl.lst:369(Public_Laws))), § 714(p)(2)(B)-(D), (l), July 18, 1984, 98 Stat. 964 (<http://uscode.house.gov/statviewer.htm?volume=98&page=964>), 965; Pub. L. 105-34, title XI (<http://www.gpo.gov/fdsys/pkg/PLAW-105publ34/html/PLAW-105publ34.htm>), § 1141(b), title XII, §§ 1232(a), 1234(a), Aug. 5, 1997, 111 Stat. 981 (<http://uscode.house.gov/statviewer.htm?volume=111&page=981>), 1023, 1024; Pub. L. 105-206, title III (<http://www.gpo.gov/fdsys/pkg/PLAW-105publ206/html/PLAW-105publ206.htm>), § 3507(a), July 22, 1998, 112 Stat. 772 (<http://uscode.house.gov/statviewer.htm?volume=112&page=772>); Pub. L. 107-147, title IV (<http://www.gpo.gov/fdsys/pkg/PLAW-107publ147/html/PLAW-107publ147.htm>), §§ 416(d)(1)(C), 417(19)(C), Mar. 9, 2002, 116 Stat. 55 (<http://uscode.house.gov/statviewer.htm?volume=116&page=55>), 57.)

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