Transcript Available of IRS Hearing on Partnership Audit Regs

DATED SEP. 18, 2017

SUMMARY BY TAX ANALYSTS

A transcript is available of a September 18 IRS hearing on proposed regulations (REG-136118-15) on the implementation of a provision of the Bipartisan Budget Act of 2015 that repeals the current rules governing partnership audits and replaces them with a new centralized partnership audit regime that generally assesses and collects tax at the partnership level.

FULL TEXT PUBLISHED BY TAX ANALYSTS

UNITED STATES DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

PUBLIC HEARING ON PROPOSED REGULATIONS
"CENTRALIZED PARTNERSHIP AUDIT REGIME"

[REG-136118-15]

Washington, D.C.

Monday, September 18, 2016

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P R O C E E D I N G S

(10:00 a.m.)

MR. ARMSTRONG: Good morning, everyone. I would like to thank everyone for gathering here today. This is the Public Hearing regarding the Proposed Regulations published on June 14, 2017, that will implement the New Centralized Partnership Audit Regime, enacted by the Bipartisan Budget Act of 2015.

The New Centralized Partnership Audit Regime will replace the TEFRA Partnership Procedures for taxable years beginning January 1st of next year, 2018. The proposed regulations following the Part 301 of Title 26 of the Code of Federal Regulations, and the Regulation Project number is REG-136118-15.

So, I wanted to first start off by introducing the panel members gathered here today. My name is Greg Armstrong; I am a Senior Technician Reviewer in the Office of Associate Chief Council, Procedure and Administration.

Drita, would you like to?

MS. TONUZI: I'm Drita Tonuzi. I'm the Deputy Chief Counsel for Operations, formerly NPNA.

MS. BLACK: Good morning. My name is Jennifer Black. I'm a Senior Counsel in Associate Office of Chief Counsel Procedure and Administration.

MR. O'DELL: Brendan O'Dell, Attorney-Advisor in the Office of Tax Policy and Treasury.

MS. HODES: Rochelle Hodes, Associate Tax Legislative Counsel, Office of Tax Policy.

MR. ARMSTRONG: Our Schedule today includes five speakers and the list of speakers has been handed out, each speaker will have 10 minutes to present their remarks, and there is a timer at the podium that will count down from 10 minutes to alert the speaker of how much time remains. The panel members may then pose any questions to each speaker.

To the extent that time permits, additional persons here today will be permitted to present oral comments provided they give notification at/or prior to the commencement of this hearing, to the IRS employees at the entrance of the room.

MS. TONUZI: So, if you want to speak, this is your opportunity to go tell the folks outside the door.

MR. ARMSTRONG: So, let's move forward to our presentation by the speakers, and we'll go first with Richard Hunn, testifying on behalf of the Tax Section of the State Bar of Texas.

MR. HUNN: Thank you. I am Richard Hunn, with the law firm Norton Rose Fulbright, but I'm appearing here on behalf of the State Bar of Texas Tax Section. And I also have with me Leonora Meyercord, who is with Thompson & Knight. And she's here also on behalf of the State Bar Tax Section. And we appreciate very much the opportunity to be here to present on these proposed regulations, and we made a detailed witness submission previously, and each of us has submitted an outline to folks on several topics.

I will say, while we are here, on behalf the State Bar Tax Section, ultimately the views that "Lee" and I express are our own. And so I've selected three topics to focus on. The first is the election out, and disregarded entities. The second will be factors for IRS designation of partnership representative, and the third will be modification by partners filing amended returns.

Now, the first one, I understand that Treasury and the IRS had expressed concern about expanding the election out beyond what is in the proposed regulations, and it occurs to me that any expansion would ultimately increase in our work for the IRS because we are talking about those cases now being subject to deficiency procedures.

But I have attempted as best I can and my comments, particularly the detailed comments, and well today about why I think disregarded entities may be a special case for an exception, and may pose, perhaps, the least additional burden of any possible exceptions that Treasury and the IRS would implement.

And so we respectfully recommend that the proposed regulations be modified to allow partnerships with disregarded entities to be eligible for the election out. And the underpinning for that is basically two-fold, the first being, as a legal matter, the regulations under Section 7701 provide for disregarded

entities, and provide that they would generally be disregarded for all federal tax purposes. And the exceptions are numerated in those regulations, and it's just if you, one of which, for example, is for employment tax purposes.

So, that we think as a contextual under existing law of disregarded entities, for example, any special case possibly for an exception to be eligible for the election out. And the second is as a practical matter. Now, we believe the IRS could require the partnership to submit the information for both the disregarded entity and its owner, so that all the IRS need do then is look through the disregarded entity to determine whether the partner in question is eligible.

So, for example, if this disregarded entity were owned by a partnership, the partnership would not be an eligible partner for purpose of the election out.

If there are any questions, I'm happy to answer them now, on this point.

MS. BLACK: I think we'll wait until the end.

MR. HUNN: Okay. Next, I want to speak just briefly about factors for IRS designation of a partnership representative, and the regulations provide generally, that if a partnership ceases to have a representative at some point, the IRS can designate one, and the Proposed Regulation Section 301.6223-1(f)52, provides a list of factors that the IRS will consider. And in the main body of that subsection it says that it will look for suitable partners, but in the absence of a suitable partner, it says the IRS may consider certain factors.

And our suggestion would be to change that to: the IRS will ordinarily consider one or more of such factors. The concern being otherwise there's no actual imposition of any discretion; the discretionary requirements for the IRS, and so if that would be, that would just be a small tweak, but ordinarily the IRS would attempt to apply one of those factors.

And then finally, the third topic I was going to address is modification by partners filing amended returns, and the concern I hear is that — and the IRS has acknowledged this in a preamble to the proposed regulations and Treasury has as well. That if an individual partner's Assessment Statute of Limitations has expired, then that partner would not be eligible for modification with respect to the imputed underpayment.

And so one suggestion that's made in the preamble to the proposed regulations is that partnership attempt to secure an extent — consent to extend the Statute of Limitations. Now, ordinarily, taxpayers don't have much control over the extension of the Statute of Limitations, the form, for example, is not available on the IRS website, so our thought was, perhaps at certain key trigger points during the partnership audit, the IRS could supply the Form 872 that applies for extension of the individual partners period of limitations, and information for contact person at the IRS, then it would be up to the

partnership representative to provide the Form 872 to the various partners, and then each partner who wishes to have their assessment statute extended, could provide a completed form to contact person at the IRS.

This way we've got a mechanism throughout the process, at the beginning of the audit and at each time the IRS solicits a partnership Statute of Limitations extension to kick out forms to the partners if they want to have individual assessment statutes extended. So, it puts most of the burden on the partnership and the partners, and it provides the process for that to happen.

So those are the three points I had planned to address. If you have any questions I'd be happy to try to answer if I can.

MS. BLACK: I actually had one question. When you were talking about disregarded entities, you had mentioned that looking through the DE to the owner, did you have any suggestions regarding how that might be facilitated at the beginning of the process if the election were made by the partnership?

MR. HUNN: Yes. I think those regulations ordinarily require, for example, in the one statutory exception for S corporations that the partnership supply all the taxpayer identification, the name, tax verification number, and so on, of each member of the S corporation that happens to be a partner.

So our thought would be to impose the same sorts of requirements on disregarded entity, that they be required when they make the election out, to supply the information for the disregarded entity as well as for the owner of that disregarded entity.

MR. O'DELL: I have a question. Do you have a view on how the election out should operate if they were disregarded entities owned by disregarded entities up the chain?

MR. HUNN: I would think what we want to do is essentially, require at the time of the election out, that the partnership supply all of that information. So if there's a string of disregarded entities they'd be required to put all of that information including the ultimate owner.

MR. ARMSTRONG: Thank you, Richard.

MR. HUNN: Thank you.

MR. ARMSTRONG: Okay. Our next speaker is Leonora Meyercord, also speaking on behalf of the Tax Section of the State Bar of Texas.

MS. MEYERCORD: All right. Thank you.

As they said, I'm Lee Meyercord and I am speaking on behalf of the Tax Section of the State Bar of Texas, and I'm an attorney with Thompson & Knight.

And I want to thank you for the opportunity to speak today, and I'm going to focus my comments on three points. The first thing I'd like to talk about is the statute limitations for adjustments. There is a glitch in the statute in the proposed regulations that potentially allows the IRS an unlimited amount of time to make partnership adjustments, and under 6235(a) which sets forth the period of limitations and provides that the IRS do make adjustments as long one of three periods is open.

The first period in paragraph one, is the three-year period that we are familiar with, three years from the date of the return is due or filed, but paragraphs two, and paragraph three, the basic statute adjustment on the date NOPA is issued. So, paragraph two addresses the situation on which the NOPA is issued, and the partnership requests modification of the vendor payment.

And the statute that in that situation the IRS has turned in 70 days to make adjustments. And paragraph three addresses the situation in which NOPA is issued, but the partnership does not request the modification, and it allows that the IRS' 330 days in that situation to make adjustments.

However, the statute in the proposed regulations don't provide a time period in which the NOPA must be issued, so the implication is, is that the IRS could issue a NOPA at any time, and then have up to 540 days, under paragraph two, or 330 days under paragraph three, in which it can make partnership adjustments.

And we don't think that this is Congress' intent, there's no legislative history to suggest that it was indoor seeing unlimited statute limitations for partnership adjustments, and we think that this would pose a significant incentive for partnerships to reorganize their ownership structure to allow them to be eligible to elect out of the centralized audit regime, which would have the effect of increasing the number of partnerships that have to be audited under the pre-TAPPA rules which would be complex and burdensome, which may ultimately reduce the number of partnerships which are audited which would be contrary of Congress' intent.

We think a logical inference to the statute is that NOPA must be issued within that three-year period set forth in 6235(a)1, three years from the date the return is due or filed. And we think, finally, regulations should provide that the NOPA must be issued during that period. That would both protect the three-year limitations period, while aligned for an extension for the time period during which the partnership can request the modification, and the IRS can consider that modification.

The second point I'd like to talk about are the consequences of the failure to furnish statements in the push-out election. The statute allows that the partnership can avoid tax by making a push-out election, in which case the reviewed year partners take their share of the adjustments and pay tax, on their reporting year return, and the proposed regulations provide helpful guidance regarding how those statements are furnished to those reviewed year partners.

For example, if the statement is furnished by mail, the rules provide that the partnership sends that statement either to the current or last-known address, and then if it's returned, take reasonable diligence to determine the correct address.

But the proposed regulations don't address, however, what happens if the partnership fails to improperly furnish — fails to properly furnish some but not all of the statements, you know. For example, if we have a partnership that has 150 partners, and it properly furnishes the statements to 148 partners, but fails to properly furnish two statements, either because it doesn't have the current or last-known address, or it didn't take reasonable diligence after it was returned.

The question is: is the push-out election invalid with respect to all 150 partners, or is it only invalid with respect to those two partners that didn't receive their statements?

And we recommend that the final regulations clarify that it's only going to be invalid with respect to those two partners. And we think this is the probably the only administratively practical approach, because by the time the IRS determines that some statements were improperly furnished, the other partners who did properly receive their statements may have already filed their — reporting their return taking into account the adjustments and paid the tax.

You know, for example, if the partnership furnishes the statements on December 2021, while individual partners are required to take those adjustments into account and pay the tax on their 2020 return — 2021 return due April 15, 2022. The IRS may not determine months after that that some statements were improperly furnished.

And the third point I'd like to talk about is tax collection from constructive or de facto partnerships, and this is of particular relevance to the oil and gas industry, because a joint operating agreement involving co-owners of oil and gas properties is frequently a constructive partnership, and what we refer to as a tax partnership, and unless they elect out, there are tax partnership for federal income tax purposes, but there's no state law legal entity.

And the proposed regulations make clear that the IRS will scrutinize these types of constructive or tax partnerships, and they will be subject to the centralized audit regime, but they don't address how a constructive partnership will pay the tax when it doesn't have any assets because it's not a legal entity.

And we recommend the final regulations clarify that a constructive or tax partnership is going to be treated as if it made a push-out election. And we think this is really a clarification and not a substantive change, because right now, the proposed regulations allow the IRS to treat a partnership that lacks the ability to pay as a partnership that ceases to exist, and therefore has made a push-out election. So, we think that that without this clarification that's likely how it would work, but taxpayers would appreciate the additional clarity.

And those were my three points, I'm happy to answer any questions.

MS. HODES: One question I had is, if you would explain how you view the statute working in the case where two statements were not furnished, so under your proposal they would be in validation of the two but the remainder of the election would be valid. How would that work under the statute?

MS. MEYERCORD: Well, so I think then in that situation the two that were invalid would be collected — the tax attributable to those two partners would be collected, assessed and collected from the partnership under 6225.

MS. HODES: So, the push-out is the push-out of adjustments, not the push-out of IU, and that's sort of what I'm wondering, if you could explain how to do that.

MS. MEYERCORD: Right, right. It would be the push out of the adjustments, so then you would have to re-compute the portion of the — you would re-compute basically, in pay, underpayment based on just those two partners. Does that make sense?

MS. HODES: Mm-hmm. All right.

MR. ARMSTRONG: Thank you, Leonora. Your next speaker is Donald Susswein, testifying on behalf of the Real Estate Roundtable

MR. SUSSWEIN: Thank you very much. Don Susswein. I'm a principal in RSM and I'm testifying on behalf of the Real Estate Roundtable, leading policy voice in the nation's capital for developers, builders, owners, investors, managers, brokers, and other service providers in the real estate industry.

Thank you for allowing me to testify and I'd also like to particularly thank the Treasury Department and the IRS institutionally, and in particular, the people on this panel and many others, some of whom are in this room, for the very hard work you've all done grappling with these very, very difficult issues.

People have been talking about reforming or replacing these rules for just about 30 years, and it really wasn't until about two years ago that we all realized how difficult it was. The Dave Camp Bill was basically put forward and seriously considered and it was found that it didn't really work for anybody.

And so, people in the government, private sector, the Real Estate Roundtable played a major role in trying to do something constructive and actually try to come up with a solution that would not disrupt the partnership sector, but would also satisfy the legitimate needs. You cannot have an industry or a sector this important that cannot be audited effectively.

What everyone I think quickly discovered is that the problem had been misunderstood or not fully understood for 25 or 30 years which is it's not just a question of collecting the tax, but it's really a

question of determining the tax because partnerships do not only not pay tax, but they also — it's not determined at the partnership level.

So, you have to have some mechanism, some device, some procedure for getting the information from the audit and the information that the individual ultimate partner, together in some fashion, having somebody apply that information and then, of course, giving the IRS the opportunity to review that information. And, potentially, review the entire process by which the information gets through.

Unfortunately, or fortunately, you cannot just say, all right, we're just going to net out everything at the partnership level and impose a 39.6 or even a 35 percent tax. It's just not going to work. So, from the Roundtable's point of view, and I think for many in the private sector the key is how do you come up with a mechanism that reserves and respects the fundamental pass through nature or pass through entities, and we think the push out method accomplishes that.

And if you think about it, part of the difficulty that a lot of people had dealing with it, it kind of came natural to anyone that works in an accounting firm that does, you know, tens of thousands of partnership returns because every year we go through this process. December 31st the deal is done and that information percolates, cascades down. But to some extent it's like getting used to. You have in your mind a telephone exchange like a switchboard where A says I want to talk to B and somebody plugs them together.

Now we have the internet. Nobody knows how it gets there, but somehow the information gets there. Well, we have a system. We think it works, but the IRS did raise very important concerns. How do you know about the process? How can you be sure? How can you even have a review of the process? And, as you know, you were kind enough to meet with us and we suggested a process whereby you would take advantage of that, essentially, one year period that the statute already has between the time the amount of the adjustment if fundamentally determined and the time the audit is open, and use that opportunity to have what we call a early decision or essentially partnerships opt in to giving you the information early, giving you drafts, and using that year so, hopefully, everything will be done correctly.

There's no reason to think it won't be, but at least you will have the opportunity during that year to see the information in draft form from tier, to tier, to tier, to tier and then once you're satisfied either that you trust the people who are doing it or that you've done a spot check or you've looked at all of them if you want to. You will be able to understand that you've done that and that you will then pull the trigger and say, fine, we're confident that the process of getting the information up works. And then once the information gets up you're basically relying on the same self-assessment system that exists in the rest of the tax system.

I'd be happy to answer any particular questions about that or any other specific aspects of that, but we think that is a mechanism that will both preserve and protect the fundamental nature of pass through

taxation, but also address the very legitimate concerns that the IRS made in the preamble about it being a black box that you had no idea what's going on. This makes the black box transparent.

The other thing I'd like to mainly focus on is talk about priorities. To tell you the truth, I don't think the partnership community is fully aware of what they're facing. The fact that there was a delayed effective date that kind of maybe lulled a lot of people thinking that they don't really need to take these rules that seriously, but that's going to quickly end in a few months.

And you've got a lot of difficult responsibilities. You've got to get your forms and your processes all set. The operation is a huge adjustment. But I would like to suggest that from the standpoint of the private sector and not disrupting the economy one can take a priorities' approach.

For example, if you don't get the rules for getting partnership reps selected in exchange, if you don't get those done perfectly that's not an urgent matter. Fundamentally, that really doesn't become an issue, I think, until the audit begins. Even if you don't get the entity level tax perfect, if you don't get all the basis adjustment rules perfect I don't think that's essential to be done in the next two months.

But I think if you look at it from the standpoint of a perspective partner who's saying, hey, I wanna invest in this thing or somebody was trying to raise capital you don't want to have a deadweight cost on the economy, some kind of uncertainty that prevents people from doing business deals. It'd be one thing if that cost endured in the form of a tax to the Treasury, but this is just a deadweight cost if there's too much uncertainty.

So, the most urgent thing, respectfully, if that prospective investors know that however many of the technicalities remain to be determined that ultimately they know that worse comes to worse they're only going to be subject to tax on their own tax liability correctly determined. And that means that even if everything else doesn't get done perfectly as long as people know that when they invest in a partnership the worst that can happen to them, assuming they write their contracts properly, is that they will be hit with their tax liability for their underpayments. That is the fundamental principle of past due taxation.

And in order for this new bill, new law, not to just create a hindrance on the economy, a deadweight cross, so to speak, getting confidence out there that there is going to be a push out method for tiered partnerships is very important. And that can be done even if other aspects of the regulations are reserve or still left in temporary form or proposed form, possibly even announcements, notices, whatever clarifications, and FAQ, whatever, something like that.

We think, at the Roundtable, that it's critically important that any investor be able to have absolute assurance that as long as that investor is willing to bear the tax that he or she owes because of his or her tax liability and not have to bear the tax cost or the economic cost of someone else's tax liability that is key. That's the most important thing that I think has to get out as early as possible.

And even if all of the rest of the issues can't be fully resolved some kind of a notice or an early reg or temporary reg clarifying that point would be extremely welcome and well-received. With that, I'd be happy to answer any questions either about the big picture or any of the specific proposals we've advanced to try to address the government's concerns.

MS. TONUZI: Any questions? No. Thank you.

MR. ARMSTRONG: Thanks, Don. Or next speaker is David Colmenero testifying on behalf of the Texas Society of Certified Public Accountants.

MR. COLMENERO: Good morning. Let me begin by saying thank you for the opportunity to testify on a very important issue that is concerning to tax payers and tax professionals. I am David Colmenero. I'm a partner with the law firm of Meadows, Collier, Read, Cousins, Crouch & Ungerman in Dallas, Texas.

I've been licensed as a CPA for 21 years and as an attorney for 20 years. I am speaking as a current member of the Texas Society of CPA's Federal Tax Policy Committee where I serve as committee chair. The Texas Society of CPAs is a nonprofit, voluntary, professional organization representing 28,000 members. The Federal Tax Policy Committee has been authorized by the Texas Society of CPAs to speak on behalf of its members.

That being said, a disclaimer, I am not speaking on behalf of and my comments do not necessarily reflect the views of my firm, Meadows, Collier, Reed, Cousins, Couch & Ungerman.

Texas businesses and tax payers have a strong interest in these new partnership audit rules. Partnerships are heavily and strongly regularly utilized in Texas in a number of different contexts. They are commonly used as part of Texas tax planning structures. We are concerned that the new centralized partnership audit rules may negate some of the pass through principles that have been inherent in Subchapter K, and we encourage the IRS and Treasury to stick to those long established substantive principles as much as possible.

We are also concerned that the new audit rules may bring about several inequitable results, and we ask the IRS and Treasury to ameliorate those where possible.

I would also note that in finalizing these regulations we believe that the IRS and Treasury should be mindful of the overall goal in implementing any regulations and that is that the ultimate goal should be to give a fact of Congressional intent. The Joint Committee of Taxation and the preamble to the proposed regulations made clear that Congress intended to create a structure by which a partnership and its partners pay the amount of additional tax that would be owed by the partners if the partnership had originally reported the adjusted items, as proposed by the IRS, on the original return while at the same time streamlining the audit process. We believe these underlying principles should guide the IRS in finalizing these regulations.

I'll begin by addressing the imputed tax adjustment amount. We are concerned that the partnership regulations under these new statutory provisions at least are not clear on how suspended losses should be taken into account. And by this I'm referring to a reduction or an adjustment to losses that are taken by a partnership, but which are not ultimately utilized by the partners at the partner level, perhaps because of the passive loss rules or because of the at risk rules or possibly because of inadequate basis at the partner level.

We believe these should be taken into account in arriving at the partnership adjustment amount. How you get there, you know, could be a number of different ways. Perhaps the IRS takes this into account initially as part of its adjustments or, perhaps, this is done by the partnership in requesting an adjustment to that amount, but somehow we believe it should be factored in. Otherwise, you could end up with a situation where your partnership is assessed tax on disallowed partnership losses that were never actually utilized at the partner level.

With respect to the pushed out election our members are significantly concerned that the deadlines related to making the push out election of Section 6226 may not be long enough. Having only 45 days from the date that a notice of partnership is mailed by the IRS to determine whether to make the election in 60 days from when a partnership adjustments become final, to issue statements under Section 6226 does not provide enough time to undertake the significant computations required in making this election. Make no mistake, these elections will be complex and time consuming.

In addition to the review your adjustments, each individual partner will need to factor in and compute the effect on the partner's tax liability, not only for the reviewed year, but with respect to all intervening tax years as well. Tax attributes will also have to be taken into account.

In addition to the complexity of these computations, competing deadlines must also be factored in, including the normal Federal income tax filing deadline, as well as a myriad of other state and federal filing deadlines, as well as significant dates in advance. A partnership representative who may very well be liable to the partners for decisions he or she makes may, understandably, want to meet with each one of the partners before making this election and discussing the option. This will only require additional time.

For these reasons, we believe the IRS and Treasury should include provisions that would permit, either automatically or upon request an extension of these deadlines.

Moving on to the partnership representative provisions. We believe that the regulations should make clear that neither an employee nor a representative of the IRS will ever be appointed to serve as a partnership representative. Where a partnership has not designated a partnership representative the IRS has given broad authority to designate a representative.

But we are concerned that because of the manner in which this statutory provision has been construed in the regulations the IRS may be tempted in some cases, and the scenarios are various, to appoint an IRS representative, perhaps even the auditor himself or herself as a representative. While we under the statutory authority was generally and broadly written we do not believe this was ever the intent of Congress.

Moving on to the opt out election, and particularly as it relates to disregarded entities. We believe in determining the eligibility on the part of an entity to elect out of the partnership audit regime. Wholly owned entities that are disregarded for federal tax purposes must be disregarded in determining eligibility as well.

Following the adoption of the so called, check the box regulations, the IRS and Treasury represented to tax payers that these entities would be disregarded for federal tax purposes. These rules have been around a long time. They are commonly known and understood, and relied upon by tax payers in a number of different scenarios.

One can safely assume that Congress, as well, was also familiar with these rules and is well aware of how disregarded entities are treated for federal tax purposes. One would expect that if Congress had intended to override these disregarded entity provisions they would have specifically said so. They didn't. And therefore, the default rules for disregarded entities should continue to apply for partnership audit purposes as well.

With respect to trust, also in the context of opting out, we believe that the IRS should, at a minimum, look through a partner that is entrust to the granters and beneficiaries of that trust in determining if a partnership is eligible to opt out. In all instances a trust share of income from a partnership will be reported either on the trust income tax return, and very commonly on the income tax return of the grantors and the beneficiaries.

And particularly for this reason we believe it may be appropriate to look through the trust to the individual grantors and beneficiaries in determining eligibility. But I would also note that estates, that the regulations do permit an estate to own an interest in a partnership without disqualifying that partnership to opt out of the partnership audit rules. We don't see any meaningful difference between an estate, on the one hand, and a trust on the other with respect to the partnership audit rules.

I would also like to echo, in closing, the State Bar of Texas' concerns on the statute of limitations. We believe that the regulations should clarify that the period of limitations on IRS assessments does not remain open indefinitely. Section 6235(a) provides a statute of limitations on IRS assessments. It consists of three parts, Subsection A1, A2, and A3.

A1 provides a general rule which is three years from the later of the date the partnership return was due or when the partnership return was filed or the date in which the partnership filed an

administrative adjustment request. However, the periods under the other two Subsections, A2 and A3, run from the date that the notice of proposed partnership adjustment is issued. A3 specifically says that the IRS has 330 days from when a notice of proposed partnership adjustment is issued and the limitations' period would not expire before then.

However, neither the statute nor the regulations indicate how long the IRS has to issue a notice of proposed partnership adjustments. Because there is no deadline we are concerned that the IRS may view this as giving itself an unlimited period of time to make an assessment. We do not believe this was the intent of Congress. Is that is how this provision is construed it would effectively nullify the limitations' provision which could not have been the intent of Congress.

Those are my comments. I'm happy to take any questions you may have.

MS. HODES: I actually had one question. Back to the beginning when you were talking about suspended losses. I was just wondering if you thought any other parts of the statutory regime or the proposed regulations could address the suspended losses or if not why something like, let's say, the modification provisions don't address suspended losses?

MR. COLMENERO: Yeah, I don't believe that the modification — well, the statute itself does not address suspended losses. Now, I will note that the statute does address losses that are, you know, disallowed due to the passive loss rules, but in the context of publicly traded partnerships or certain large partnerships.

And it provides for a mechanism, it's a fairly complex formula, for basically taking those into account in the year of adjustment. But, as a general matter, it does not address losses that are suspended in any other context. We think that is an appropriate topic to be addressed in regulations. They are not mentioned in the context of imputed tax adjustment provisions. They're not really addressed anywhere, to the best of my knowledge.

Now, the imputed tax right provisions are really focused more on adjusting the rate itself. But this really goes more to the issue of adjusting or coming to the partnership adjustment amount itself. I would think that's probably the place where the suspended losses ought to be factored in.

But like I said, there are probably a lot of different ways to address them. Right now they're not addressed at all, and on some level they ought to be addressed because if the ultimate goal is to arrive at an amount of liability that the partnership partners would have owed if the adjustments had been factored in to begin with then there should be a mechanism for taking those into account on some level.

MS. HODES: And you don't think the modification mechanism does that?

MR. COLMENERO: If it does, it's not clear that it does. They're not mentioned.

MS. TONUZI: Just a follow up question. Do you think the amended return modification process and/or the push out process would allow for taking into account the suspended losses?

MR. COLMENERO: It may. In theory it seems like it ought to, but if, for whatever reason, the partners do not want to go down the avenue then you're left with the imputed tax amount that would be owed at the partnership level and there ought to be some mechanism for taking those into account at that point.

MS. BLACK: I just had a quick question about the election out. You mentioned that you didn't see a difference between a trust and an estate, and I just wanted to ask a clarification there because the regulations and the statute allow only for estates of deceased partners whereas another type of estate would not be an eligible partner. So, do you — is it just the estates of deceased partners that you view as no different than a trust or estates in general?

MR. COLMENERO: I think the estates of deceased partners are very similar to trusts in that you do have a fiduciary that is in possession of the estate assets like you would a trustee with respect to the assets of a trust. You have, you know, beneficiaries, you have a grantor in the context of trust, from decedent the context of an estate. There are very similar in many respects.

We do not see a meaningful reason for distinguishing between estates, of any kind, and trusts. They are very similarly situated, certainly with respect to the partnership audit rules.

Thank you all very much.

MR. ARMSTRONG: Thank you, David. Our next speaker is Sarah Allen-Anthony testifying on behalf of the AICPA.

MS. ALLEN-ANTHONY: Good morning. My name is Sarah Allen-Anthony, and I'm a tax senior manager at Crowe Horwath LLP.

My testimony today is on behalf of the American Institute of CPA's. The National Professional Accounting Association, representing more than 418,000 members in 143 countries. I am currently a member of the AICPA Partnership Tax Technical Resource Panel. Thank you for allowing me to testify today.

On August 14, 2017, the AICPA submitted written comments to the IRS on the proposed regulations. My testimony today, focuses on our recommendations and concerns related to several areas of the proposed regulations marked reserved. The process for determining and designating the partnership representative and allowing an audited partnership access to the IRS Office of Appeals.

The centralized partnership audit regime significantly changes the way adjustments made by the IRS during an exam are accounted for by a partnership. A bedrock principal of partnership taxation is that all items of income and expense flow through to the partnership's owners, including adjustments relating to IRS audits. The regime replaces this long-standing method with one, where the default mechanism requires the partnership to pay any additional tax due, resulting in significant administrative and accounting complexities. One of the main areas of increased complexity involves the partners basis and capital accounts and the effect of audit adjustments on these.

To simplify the process, we recommended that a partnership allocate audit adjustments, which result in an imputed underpayment under sections 705(a)(1) E or 2E in accordance with the partnership agreement of the reviewed year.

We also suggest subjecting the audited adjustments to these substantial economic affect rules of section 704. For the portion of the audited adjustment allocated to a reviewed year partner, that retains their ownership in the adjustment year, we recommend for simplicity, that the following two rules would apply.

First, if the partnership elects to pay the imputed under payment or the partner lacks to pay the safe harbor amount, then to make the net adjustments for the reviewed year, and intervening years to the partner's capital account and basis in the adjustment year.

Alternatively, if the partner elects to file an amended return or the partner recalculates their tax liability for the reviewed and intervening years, using the push out election, to make the adjustments to basis and capital accounts, in the appropriate tax year and then in each year's amended return, or recalculation worksheet.

Next, if the portion of the audit adjustment is allocated to the interest of a partner who was a partner in the reviewed year, but had disposed of their interest prior to the adjustment year, we recommend a similar methodology, that if the partnership elects to pay the imputed underpayment or the partner pays the safe harbor amount, that the net adjustments to basis and capital accounts are made to partners in the adjustment year.

Alternatively, if the partner files an amended return or the partner recalculates their tax and pays it via push out election, that the adjustments to capital account and basis would be reflected in each year's amended return and/or recalculation worksheets.

Additionally, we suggest that the effective adjustments related to any intervening years, between the disposition year and the adjustment year as well as any carry-over adjustment from the reviewed year partner are taken account by the adjustment year partner, in the adjustment year.

In both situations for adjustment year partners, which require their interest in a taxable transaction, that any necessary revisions to section 743(b) adjustment would happen in the adjustment year. When an audit adjustment is allocated to the interest of a reviewed year partner redeemed out by the partnership, we suggest allocating the adjustment in accordance with the partnership agreement in the adjustment year, as a 734(b) adjustment in the adjustment year.

We further recommend that the additional tax paid along with the interest and penalties imposed for the underpayment of the tax are allocated in the same manner, as the associated adjustment.

Next, I'd like to address permitting the use of push out election by tiered partnerships. We propose that the IRS establish procedures to allow for the push out of partnership adjustments through a tiered partnership structure. In general, we discourage establishing any limitation on tiers, dollar amounts, number of partners or other attributes, because those limitations may result in partners paying inappropriate amounts of tax due.

We believe the framework we proposed in our August 14th letter, would result in a system that is administrable both for the IRS and taxpayers while allowing each partner to more accurately pay their appropriate share of taxes on any audit adjustments.

The framework would also enable the IRS to collect the appropriate amount of additional tax without the inefficiencies experienced with the current tougher system. We envision having an audited partnership electing to push out any adjustment under section 6226, complete a partnership adjustment report and adjustment K1's within 60 days after the audit's final determination date. The PAR and adjustment K1's would mimic the existing scheduled K1 and partner specific schedule K1 regime used for original returns with additional information provided as needed, to accurately report the results of an examination. Upon receipt of an adjustment K1 from an audited partnership, a partnership partner would have an option to file a PAR and related adjusted K1's with the IRS and their own partners within 60 days of the date shown on the adjustment K1 received by the partnership partner.

The same process and 60-day deadline will apply to each upper tier partnership electing to further push out the adjustments. We also recommend that an S corporation partners follow a similar procedure to report the properly allocable portion of the adjustments to the IRS and its owners.

If a partnership partner in a tiered structure fails to file its PAR with the IRS within the required timeframe, we propose that the IRS would issue an assessment of tax in an amount equal to the safe harbor amount as calculated in the proposed regulations, and for those purposes to treat any partner which is not an individual, as if it were an individual subject to the Chapter 1 tax for this purpose.

We suggest making all PAR's and adjustment K1's due no later than the extended due date of the audited partnership's tax return for the taxable year in which the final partnership adjustment is

issued. We believe that placing an overall time limit on the process is preferable to establishing a maximum limit on the amount of tiers the push out can be made through.

In order to facilitate the collection and tracking through a tiered partnership of PAR's and adjustment K1's, we propose creating a centralized special processing unit within the IRS. We also suggest assigning a control number to each audit which is a reporting requirement on any documents submitted to the IRS for taxpayers.

We would also like to suggest the IRS establish procedures for the electronic submission of adjustment K1's to partners, similar to rules for original K1's, because it is critical that the partners receive the K1's as expeditiously as possible, particularly in tiered partnership structures, in order to meet the time frames and to help the IRS to collect the appropriate amount of taxes efficiently as possible.

Next, I would like to address our concern that there is no reference in either the preamble or the proposed regulations to an audited partnership's right to challenge various determinations under the regime with appeals. The appeals process is a vital option for taxpayers to resolve an issue, without having to go to tax court. We think that the final regulations should contain an explicit right to challenge certain actions or determinations by the IRS via the appeals process.

We propose allowing a partnership the right to appeal the determinations under sections 6221, and 6241 within 60 days of receipt of determinations. Last, I would like to highlight several of our concerns and recommendations regarding the proposed regulations on the designation resignation and revocation of a partnership representative.

First, we oppose the proposed procedures for appointing a designated individual to act on behalf of an entity partnership representative. We believe that the entity partnership representative, not the partnership, should select a person who will act as their liaison with the IRS during an exam.

Second, we recommend allowing a partnership the ability to revoke and replace their partnership representative at any time, and that a partnership representative should also have the ability to resign at any time. The IRS has established procedures for tracking Power of Attorney designations that you could possibly modify to accommodate the necessary tracking. We have concerns that a previously designated partnership representative could discontinue their business relationship with the partnership, no longer qualifies an eligible person, become deceased or become an adverse party in relation to the partnership.

Third, we oppose the provision that allows the resigning partnership representative to appoint their own successor. A partnership is required to grant substantial control and authority over the business matters to the partnership representative unless the partnership fails to appoint any person as required by the proposed regulations. They should maintain sole authority to appoint their partnership representative.

Finally, we recommend that the —

MS. BLACK: Time.

MS. ALLEN-ANTHONY: Okay, the AICPA appreciates the time to testify today. We hope the Treasury and IRS will consider this and other items in our letter, in your development of the forms procedures and regulations to implement this centralized partnership auto regime. Thank you.

MS. HODES: I was just wondering, what were you going to say before your time lapsed, so let's put that in my question.

MS. ALLEN-ANTHONY: It was all of a sudden, I was watching it and I skipped a part.

So, the last part, is we were going to recommend the IRS clarify that all partnerships, even those electing to opt out of the regime, be required to appoint or declare a partnership representative on their timely filed partnership return, just in order to protect the interest of both the IRS and the taxpayer, so that everyone would be required to do that.

MS. HODES: And I did have one question on — you said that the partnership representative entity should be the one to name the designated individual and not the partnership. Other than, what gets put on the return, could you describe, because maybe by recollection — just describe the provisions that you see that specifically require the partnership to appoint the designated individual, that sort of stands in the way of the way you see this working?

MS. ALLEN-ANTHONY: I guess our view is that we wanted the partnership, if the entity is the partnership representative, that we want them to be able to designate the individual that will act on their behalf in the sense of an audit.

And my understanding of the way it was currently written, if you designate an entity that you need to designate also an individual acting on behalf of that entity so that if by the time that the audit were to occur, that that person that CFO, that whomever, the individual designated, they would want that to be a different individual, but the partnership throughout the entity is the same. So, if the partnership rep can just be known as the entity, that would eliminate the changing of the individual appointed by that entity partnership.

MS. HODES: Okay, that was helpful. Thank you.

MR. ARMSTRONG: Thank you Sarah.

MS. ALLEN-ANTHONY: Thank you.

MR. ARMSTRONG: So, has anyone here spoken with the P&A employee at the back of the room who would like to present any oral comments, who has not previously done so?

Seeing that there are none, I will conclude our hearing today. And I'd like to thank everyone for attending, especially our speakers who took the time to make their presentations today. Thank you.

(Whereupon, at 10:59 a.m., the HEARING was adjourned.)

DOCUMENT ATTRIBUTES

CODE SECTIONS	SEC. 6221 TAX TREATMENT DETERMINED AT PARTNERSHIP LEVEL SEC. 6222 PARTNER'S RETURN MUST BE CONSISTENT WITH PARTNERSHIP RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY SEC. 6223 NOTICE TO PARTNERS OF PROCEEDINGS SEC. 6225 ASSESSMENTS MADE ONLY AFTER PARTNERSHIP LEVEL PROCEEDINGS ARE COMPLETED SEC. 6226 JUDICIAL REVIEW OF FINAL PARTNERSHIP ADMINISTRATIVE ADJUSTMENTS
JURISDICTIONS	UNITED STATES
SUBJECT AREAS	ACCOUNTING PERIODS AND METHODS AUDITS PARTNERSHIPS
INSTITUTIONAL AUTHORS	INTERNAL REVENUE SERVICE
TAX ANALYSTS DOCUMENT NUMBER	DOC 2017-70123
TAX ANALYSTS ELECTRONIC CITATION	2017 TNT 180-22