

§ 301.6231(a)(5)-1

26 CFR Ch. I (4-1-13 Edition)

(iii) The adjusted basis to the partnership of distributed property; and

(iv) The character of partnership property (for example, whether an item is inventory or a capital asset).

To the extent that a determination of an item relating to a distribution can be made from these and similar determinations that the partnership is required to make, therefore, that item is a partnership item. To the extent that that determination requires other information, however, that item is not a partnership item. Such other information would include those factors used in determining the partner's basis for the partnership interest that are not themselves partnership items, such as the amount that the partner paid to acquire the partnership interest from a transferor partner if that transfer was not covered by an election under section 754.

(4) *Transactions to which section 707 (a) applies.* For purposes of its books and records, the partnership needs to determine:

(i) The amount transferred from the partnership to a partner or from a partner to the partnership in any transaction to which section 707(a) applies;

(ii) The character of such an amount (for example, whether or not it is a loan; in the case of amounts paid over time for the purchase of an asset, what portion is interest); and

(iii) The percentage of the capital interests and profits interests in the partnership owned by each partner.

To the extent that a determination of an item relating to a transaction to which section 707(a) applies can be made from these and similar determinations that the partnership is required to make, therefore, that item is a partnership item. To the extent that that determination requires other information, however, that item is not a partnership item. An example of such other information is the cost to the partner of goods sold to the partnership.

(d) *Effective date.* This section shall apply with respect to partnership taxable years beginning after September 3, 1982. This section shall also apply with respect to any partnership taxable year ending after September 3, 1982, if with

respect to that year there is an agreement entered into pursuant to section 407(a)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

[T.D. 8082, 51 FR 13214, Apr. 18, 1986; 51 FR 19062, May 27, 1986]

§ 301.6231(a)(5)-1 Definition of affected item.

(a) *In general.* The term *affected item* means any item to the extent such item is affected by a partnership item. It includes items unrelated to the items reflected on the partnership return (for example, an item, such as the threshold for the medical expense deduction under section 213, that varies if there is a change in an individual partner's adjusted gross income).

(b) *Basis in a partner's partnership interest.* The basis of a partner's partnership interest is an affected item to the extent it is not a partnership item.

(c) *At-risk limitation.* The application of the at-risk limitation under section 465 to a partner with respect to a loss incurred by a partnership is an affected item to the extent it is not a partnership item.

(d) *Passive losses.* The application of the passive loss rules under section 469 to a partner with respect to a loss incurred by a partnership is an affected item to the extent it is not a partnership item.

(e) *Penalty, addition to tax, or additional amount—(1) In general.* The term *affected item* includes any penalty, addition to tax, or additional amount provided by subchapter A of chapter 68 of the Internal Revenue Code of 1986 to the extent provided in this paragraph (e).

(2) *Penalty, addition to tax, or additional amount without floor.* If a penalty, addition to tax, or additional amount that does not contain a floor (that is, a threshold amount of underpayment or understatement necessary before the imposition of the penalty, addition to tax, or additional amount) is imposed on a partner as the result of an adjustment to a partnership item, the term *affected item* shall include the penalty, addition to tax, or additional amount computed with reference to the portion

of the underpayment that is attributable to the partnership item adjustment(s) to which the penalty, addition to tax, or additional amount applies.

(3) *Penalty, addition to tax, or additional amount containing floor*—(i) *Floor exceeded prior to adjustment*. If a partner would have been subject to a penalty, addition to tax, or additional amount that contains a floor in the absence of an adjustment to a partnership item (that is, the partner's understatement or underpayment exceeded the floor even without an adjustment to a partnership item) the term *affected item* shall include only the portion of the penalty, addition to tax, or additional amount computed with reference to the partnership item (or affected item) adjustments.

(ii) *Floor not exceeded prior to adjustment*. In the case of a penalty, addition to tax, or additional amount that contains a floor, if the taxpayer's understatement or underpayment does not exceed the floor prior to an adjustment to a partnership item but does so after such adjustment, the term *affected item* shall include the penalty, addition to tax, or additional amount computed with reference to the entire underpayment or understatement to which the penalty, addition to tax, or additional amount applies.

(4) *Examples*. The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. A, a partner of P, had an aggregate underpayment of \$1,000 of which \$100 is attributable to an adjustment to partnership items. A is negligent in reporting the partnership items. The accuracy-related penalty under section 6662 for negligence computed with reference to the \$100 underpayment attributable to the partnership item adjustments is an affected item.

Example 2. B, a partner of P, understated B's income tax liability attributable to nonpartnership items by \$6,000. An adjustment to a partnership item resulting from a partnership proceeding increased B's income tax by an additional \$2,000. Prior to the adjustment, B would have been subject to the accuracy-related penalty under section 6662 for a substantial understatement of income tax with respect to the \$6,000 understatement attributable to nonpartnership items. The portion of the accuracy-related penalty under section 6662 computed with reference to the \$2,000 understatement attributable to partnership items to which the accuracy-related

penalty applies is an affected item. The portion of the accuracy-related penalty under section 6662 computed with reference to the \$6,000 pre-existing understatement is not an affected item.

Example 3. C, a partner in partnership P, understated C's income tax liability attributable to nonpartnership items by \$4,000. As a result of an adjustment to partnership items, that understatement is increased to \$10,000. Prior to the adjustment, C would not have been subject to the accuracy-related penalty under section 6662 for a substantial understatement of income tax. The accuracy-related penalty under section 6662 computed with reference to the entire \$10,000 understatement to which the accuracy-related penalty applies is an affected item.

(f) *Effective date*. This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(5)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50557, Oct. 4, 2001]

§ 301.6231(a)(6)-1 Computational adjustments.

(a) *Changes in a partner's tax liability*—(1) *In general*. A change in the tax liability of a partner to properly reflect the treatment of a partnership item under subchapter C of chapter 63 of the Internal Revenue Code is made through a computational adjustment. A computational adjustment includes a change in tax liability that reflects a change in an affected item where that change is necessary to properly reflect the treatment of a partnership item, or any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. However, if a change in a partner's tax liability cannot be made without making one or more partner-level determinations, that portion of the change in tax liability attributable to the partner-level determinations shall be made under the deficiency procedures (as described in subchapter B of chapter 63 of the Internal Revenue Code), except for any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item.

(2) *Affected items that do not require partner-level determinations*. Changes in a partner's tax liability with respect to affected items that do not require partner-level determinations (such as the