

Buckle Up: Navigating the Long Road of the BBA Partnership Audit

By Miri Forster and Andrew Weiner

Introduction

In the Bipartisan Budget Act of 2015¹ (BBA), Congress created the Centralized Partnership Audit Regime, also known as the BBA partnership audit procedures. Ten years later, partnerships and the Internal Revenue Service (IRS) are still very much grappling with the complex and consequential rules. Individual partners have no say in the process, and partnerships cease to be treated as flow-through entities once an audit starts. Tax administration and collection is prioritized over making sure that the correct tax is paid by the correct partner or partners. Partnerships are not without options to self-correct, minimize tax liability imposed at the partnership level, and shift tax liability to the partners. However, partnerships need to think ahead and navigate a difficult path within prescribed timeframes to achieve what the partnership determines is the optimal tax result. Under the BBA, process is substance. This article describes the basic logic and scope of the BBA partnership audit procedures as well as the steps involved and the options available. Our goal is to acclimate partnerships and their partners, and tax practitioners, with the BBA partnership audit procedures and help them with the directions available during the BBA audit process.

BBA Overview

Helpful to understanding BBA partnership audit procedures is how we got here. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) partnership procedures that BBA replaced determined partnership items in a unified proceeding at the partnership level with participation rights by any partner with five percent of more interest in the partnership. Following the partnership-level proceeding, the effects were applied to each partner and taxes were collected at the partner level. In response to a request from Congress, the Government Accountability Office (GAO) issued a report in 2014 assessing the IRS' ability to ensure compliance with large partnerships.² For decades, the partnership form had been on the rise in the American economy and, according to the GAO, "the relatively low rate at which IRS audits large partnerships and the minimal results achieved raise concerns about IRS's ability to ensure the tax compliance of large partnerships."³

MIRI FORSTER is Partner-In-Charge of the National Tax Controversy & Dispute Resolution practice at EisnerAmper. **ANDREW WEINER** is Counsel in the D.C. office of Kostelanetz LLP.

The GAO highlighted two legislative changes that could help: (1) require large partnerships to designate a representative for audit purposes, and (2) require payment of tax at the partnership level.⁴ Congress implemented both recommendations.

Under the BBA, partnerships must designate (or the IRS will designate) a Partnership Representative and a Designated Individual if the Partnership Representative is an entity that has sole authority to act on behalf of the partnership.⁵ BBA partnership audit procedures do away with partner participation at the partnership level. Further, partnerships must pay an Imputed Underpayment based on adjustments at the partnership level or, in the alternative, partners must take affirmative steps to pay the income tax consequences of such adjustments.⁶ Either way, the IRS is not required to assert liability or pursue collection at the partner level.

Partnerships are not without options to self-correct, minimize tax liability imposed at the partnership level, and shift tax liability to the partners. However, partnerships need to think ahead and navigate a difficult path within prescribed timeframes to achieve what the partnership determines is the optimal tax result.

These rules can be difficult to swallow. Partners are tethered to the decisions of the Partnership Representative (or Designated Individual) and have no rights to self-determination. The default rule that the partnership pays an Imputed Underpayment typically far exceeds the income tax consequences of the partners. Moreover, to the extent that partners came into the partnership after the tax year under audit, they are indirectly stuck with the tax bill when the partnership pays the Imputed Underpayment out of current assets. The alternatives in which the partners pay their adjusted income tax liability take careful planning and coordination.

Accordingly, it is important for partnerships to consider the applicability of the BBA partnership audit procedures. The procedures apply to all partnerships that file (or are required to file) a partnership return unless an eligible partnership opts out.⁷ The eligibility requirement to opt

out requires that the partnership have 100 or fewer partners who are individuals, C corporations, foreign entities that would be treated as C corporations, S corporations, or estates of deceased partners.⁸ The election is made on a timely filed partnership return and must include a list of the name and taxpayer identification number of each partner.⁹ The election applies only with respect to the tax year of the return, so a partnership must timely file and elect to opt out every year in order to avoid these rules.

The scope of determinations under the BBA partnership audit procedures includes any adjustment to a Partnership-Related Item and the applicability of any penalty, addition to tax, or additional amounts related to adjustments to a Partnership-Related Item.¹⁰ A Partnership-Related Item is any item or amount with respect to the partnership that is relevant to determining income tax liability and any partner's distributive share of any such item.¹¹ The concept goes beyond items appearing on a partnership return, including, for example, the character, timing, and source of partnership activities.¹² All partners are bound by the actions of the partnership and any final decision in a partnership proceeding.¹³

BBA Audit Procedures

The BBA introduced a plethora of administrative procedures to the IRS partnership audit process. Despite going into effect in 2018, partnerships and IRS exam teams are still learning how to navigate these complex new procedures. As a result, audits are taking longer to complete, and requests for statute extensions are increasing.

We summarize the steps of an IRS audit under BBA partnership procedures as follows:

Step 1: Notice of Selection of Examination

The process begins when the IRS notifies a partnership that it has been selected for review by issuing a Notice of Selection of Examination.¹⁴ A separate letter is issued for each tax year selected for audit. The Notice of Selection of Examination gives the BBA partnership 30 days to either revoke its Partnership Representative or Designated Individual if the Partnership Representative is an entity or to designate a Partnership Representative if one has not previously been selected for the exam year. To do so, the BBA partnership files Form 8979, *Partnership Representative Revocation, Designation, and Resignation*, with the IRS point of contact. It can take time for the IRS to process Form 8979, which may delay subsequent steps in the BBA audit process. If the partnership does not

designate a Partnership Representative within a reasonable period of time, the IRS may designate one on the partnership's behalf.¹⁵

Within the same 30 days, the partnership may make corrections to its originally filed partnership return. Amended partnership returns and amended Schedule K-1s are not allowed under the BBA. Instead, corrections to a previously filed return are made by filing an Administrative Adjustment Request (AAR).¹⁶ Once the 30 days have passed and the IRS has issued a Notice of Administrative Proceeding, the partnership is no longer permitted to file an AAR, and the partners in the partnership can no longer amend their returns to file inconsistent with the partnership.¹⁷

If the Partnership Representative wants a third-party representative to represent them during the audit, a Form 2848, *Power of Attorney and Declaration of Representative*, must be submitted to the IRS exam team. Form 2848 is prepared on a year-by-year basis and is signed by the Partnership Representative or the Designated Individual if the Partnership Representative is an entity. To avoid unnecessary back and forth with the IRS examiner, carefully review the Internal Revenue Manual¹⁸ to ensure Form 2848 is properly prepared from the start.

Step 2: Notice of Administrative Proceeding

No less than 30 days after issuance of the Notice of Selection of Examination, the IRS sends both the partnership and the Partnership Representative a Notice of Administrative Proceeding (NAP).¹⁹ The NAP notifies the partnership and the Partnership Representative of the start of the IRS exam. The NAP is like the Notice of Beginning Administrative Proceedings (NBAP) issued in a TEFRA proceeding. Also, similar to TEFRA, the IRS may withdraw the NAP within 60 days of issuance in certain situations.²⁰

As noted above, the partnership is not permitted to file an AAR once the NAP is issued.

Step 3: Examination

After issuance of the NAP, the IRS exam proceeds as any other examination would.²¹ The IRS conducts an interview or opening conference to gather background on the partnership. The IRS also issues information document requests (IDRs) to gather facts and develop potential issues. For LB&I exams, this could include Acknowledgement of Facts IDRs for issues which the IRS believes that proposed adjustments may be warranted.

Statute extension requests by the IRS are common as well, given the increased number of administrative procedures required by the BBA.

Statute of Limitations

Code Sec. 6235 governs the time during which the IRS is permitted to adjust a BBA partnership return. Generally, partnership adjustments may not be made after three years following the latest of:

- (a) The date on which the partnership return for the tax year was filed,
- (b) The return due date for the tax year, or
- (c) The date on which the partnership filed an AAR with respect to such year.²²

Under the BBA, the statute of limitations on adjustments is controlled at the partnership level. Extension requests are issued on Form 872-M, *Consent to Extend the Time to Make Partnership Adjustments*.²³ Exams without adjustments require at least six months remaining on the statute. Exams with agreed adjustments require a minimum of 12 months, while cases proceeding to appeals require at least 18 months to be open on a given statute.²⁴

Summary Report

If adjustments are proposed, the examiner will issue Form 5701, *Notice of Proposed Adjustment*. The Partnership Representative can agree, partially agree, or not agree to the adjustments on Form 5701.

As you can see, the BBA audit follows a long and winding road and may take years to complete. Regular communication between IRS examiners and taxpayers and patience are essential to stay on track and move forward efficiently and effectively.

Exams with adjustments (whether agreed or unagreed) require the examiner to issue a Summary Report to the Partnership Representative. The Summary Report provides preliminary exam results on Forms 886-A, *Explanation of Adjustments*, and a preliminary calculation of the Imputed Underpayment on Form 14791, along with estimated interest and penalties.²⁵

If the preliminary adjustments in the Summary Report are agreed to, the case is closed out of the IRS exam function and sent to Technical Services for processing. Technical Services is a separate centralized unit at the IRS. Processing of the case by Technical Services takes several months, further lengthening the BBA exam process.

If the BBA partnership does not agree with either the proposed adjustments or the calculation of the Imputed Underpayment (or if the Partnership Representative does not respond to the Summary Report), the IRS issues the Partnership Representative a 30-Day Letter. The 30-Day Letter provides the Partnership Representative with information on how to appeal.

Calculation of the Imputed Underpayment

The Imputed Underpayment is calculated at the partnership level based on the highest tax rate in effect under Chapter 1 or 11 of the Internal Revenue Code for the year examined.²⁶ The Imputed Underpayment is calculated on a year-by-year basis and does not consider the tax rate of the partner who would have paid the tax. As a result, the Imputed Underpayment may exceed the amount of tax that would have been paid had the adjustment been incorporated into the partnership return when it was originally filed.

There are two types of imputed underpayments—the General Imputed Underpayment and the Specific Imputed Underpayment.²⁷ The General Imputed Underpayment is most often used. The Specific Imputed Underpayment is used, based on IRS discretion, when an Imputed Underpayment is attributable to one partner, or a group of partners based on, for example, a specific transaction.

The Imputed Underpayment is calculated in several steps.²⁸ The first step is to group the adjustments into one of four buckets²⁹:

- (1) the Reallocation Grouping,
- (2) the Creditable Expenditures Grouping,
- (3) the Credits Grouping, and
- (4) the Residual Grouping.

The Reallocation Grouping is for adjustments that reallocate a partnership-related item to another partner, except for an adjustment to a credit or to a creditable expenditure.³⁰ The Creditable Expenditures Grouping is for adjustments to a Partnership-Related Item that could be taken by any person as a credit.³¹ The Credits Group is for adjustments that could be reported by the partnership as a credit.³² The Residual Group is the default category for adjustments that do not fit into any of the other groups.³³

Negative adjustments are then placed into subgroupings.³⁴ Negative adjustments are generally those that increase a

deduction or credit or decrease an item of income and therefore do not result in an Imputed Underpayment.³⁵ Positive adjustments are generally adjustments that increase an item of income or decrease an item of deduction or credit from what was reported on the originally filed partnership return.³⁶ Any adjustment that is not a negative adjustment is considered a positive adjustment.

Positive and negative adjustments are netted, but only if the adjustments are within the same subgrouping.³⁷

After that, a total netted partnership adjustment is computed by adding the total net positive adjustments in the Reallocation Grouping and the Residual Grouping. The total netted partnership adjustment is multiplied by the highest tax rate in effect for the year under exam to come up with the Imputed Underpayment for these two groupings. The product is increased by the sum of net positive adjustment in the Creditable Expenditure Grouping and the Credits Grouping to come up with the total Imputed Underpayment.³⁸

In its discretion, the IRS may treat some adjustments as zero because such adjustments are already reflected in one or more other partnership adjustments.³⁹

The Imputed Underpayment may be paid by the partnership (as an entity-level tax) or by the partners, depending on decisions made by the Partnership Representative later in the BBA exam process. If the Imputed Underpayment is paid at the entity level, the economic impact is borne by the partners currently in the partnership. If the Imputed Underpayment is pushed out to the partners, the Imputed Underpayment is borne by those partners in the partnership in the year under exam (the “reviewed year partners”). Adjustments that do not result in an Imputed Underpayment must be pushed out to the reviewed year partners.⁴⁰

Step 4: Partnership Audit Adjustments

For agreed adjustments, IRS Technical Services issues a Notice of Proposed Partnership Adjustment (NOPPA)⁴¹ to both the BBA partnership and the Partnership Representative. The NOPPA provides the partnership with the final Imputed Underpayment calculated at the highest tax rate, plus estimated interest and penalties. Issuance of the NOPPA is significant as it starts a 270-day period during which the Partnership Representative may request a modification of the proposed Imputed Underpayment. It is currently taking many months for IRS Technical Services to issue the NOPPA. The time remaining on the statute of limitations is one factor that appears to drive the order of issuance.

Cash Deposits Under Code Sec. 6303

Given the length of time between the issuance of the Summary Report and the NOPPA, partners may wish to submit a cash deposit under Code Sec. 6603 and Rev. Proc. 2005-18 to stop the running of interest. The IRS website provides rules on how a partner in a BBA partnership makes a cash deposit under Code Sec. 6603 for a disputed BBA tax liability.⁴² A cash deposit is different from an advance payment of tax in that deposits may be returned to the taxpayer without the filing of a formal refund claim. Interest on a deposit under Code Sec. 6603 will be allowed only to the extent the deposit was identified as being attributable to a disputable tax.⁴³

Before a cash deposit is made, it is important to consider whether an Imputed Underpayment will be paid by the partnership or the reviewed year partners. Cash deposits made by partners under Code Sec. 6603 cannot later be transferred to satisfy an Imputed Underpayment to be paid by the BBA partnership.

Step 5: Modification of the Imputed Underpayment

A Partnership Representative can request to modify the Imputed Underpayment by filing Form 8980, *Partnership Request for Modification of Imputed Underpayments Under IRC Section 6225(c)*. The IRS requires Form 8980 to be submitted electronically. Therefore, it is essential that Partnership Representatives give themselves sufficient time to register for online access to the BBA Online Form Submission Service.⁴⁴

If the Partnership Representative does not submit a modification request within the 270-day period, it loses the right to request modification. If additional time is needed beyond the 270 days, an extension may be obtained by filing Form 8984, *Extension of the Taxpayer Modification Submission Period Under Section 6225(c)(7)*, on the BBA online portal.⁴⁵ An extension of the modification period also extends the period of limitations under Code Sec. 6235.⁴⁶

The Partnership Representative can also waive the modification period by filing Form 8981, *Waiver of the Period Under IRC Section 6231(b)(2)(A) and Expiration of the Period for Modification Submissions Under IRC Section 6225(c)(7)*. Waiver of the modification period allows for a Final Partnership Adjustment (FPA) to be issued more quickly.

Types of Modification Requests

Several types of modification requests are available to the Partnership Representative as follows:

- Amended Return Modification,
- Alternative Procedure to Amended Return Modification,
- Tax-Exempt Partners & Foreign Partners Exempt under Code Sec. 501(a) Modification,
- Modification of Applicable Highest Tax Rates,
- Modification of Passive Activity Losses of publicly traded partnerships (PTPs),
- Modification of the Number and Composition of Imputed Underpayments,
- Deficiency Dividend Modifications,
- Closing Agreement Modifications, and
- Tax Treaty Modifications.⁴⁷

In addition to the above, the Internal Revenue Code permits the IRS to provide additional modification procedures as necessary or appropriate to a particular situation.⁴⁸

Completion of Form 8980 requires the Partnership Representative to gather a large amount of paperwork. Therefore, cooperation between the Partnership Representative and the partners in the BBA partnership is essential. It is recommended that such cooperation be addressed when drafting partnership agreements for BBA partnerships.

Some of the more common modification requests are discussed below.

Amended Return Modification⁴⁹

Under the Amended Return Modification procedures, one or more partners in the BBA partnership file amended returns, which take into account the partner's allocable share of proposed partnership adjustments. This would include amended returns for all years impacted by the adjustment. The partner must also pay all taxes, penalties, and interest calculated to be due for all impacted years. The partner is required to certify to the Partnership Representative on Form 8982 (Section A) that the amended return has been filed and that full payment has been made. Form 8982 is then submitted by the Partnership Representative with the modification request.

Alternative Procedure to Amended Return Modification⁵⁰

The alternative procedure to the amended return modification is also referred to as the pull-in procedure. The pull-in procedure is like the amended return modification, but it does not require the filing of an amended return. The partner still computes the tax, penalties, and interest due for all years and pays that amount. The partner certifies on Form

8982 (Section B) that all amounts have been paid, and the form is then submitted by the Partnership Representative with its modification request.

Tax-Exempt Modification⁵¹

Tax-exempt modification allows the allocable share of an adjustment attributable to a tax-exempt partner to be excluded from the Imputed Underpayment. For this type of modification request, the tax-exempt partner provides the Partnership Representative with Form 8983 to certify that it is a tax-exempt partner. Form 8983 gets included with the modification request the Partnership Representative submits on the BBA online portal.

Modification of Applicable Highest Tax Rates⁵²

Tax rate modification allows for a lower tax rate to apply for the portion of the adjustment that is allocable to a partner that is a C corporation or, in the case of a capital gain or qualified dividend, is an individual. For these purposes, an S corporation is treated as an individual.⁵³ If the modification request is approved, the IRS will issue Form 15027, *Partnership Summary of Approved Modifications and the Imputed Underpayment*. If the modification request is denied or only partially approved, the Partnership Representative can appeal the determination. Appeals will consider each disputed item only once.

The BBA partnership can pay the Imputed Underpayment before or after requesting modification. If the BBA partnership pushes out the adjustments to its reviewed year partners, additional procedures described below come into play. Note that when a push-out election is made, a refund is available only to the extent the partner can demonstrate that there is an overpayment of tax in the reporting year.⁵⁴ This is commonly referred to as the “stranded overpayment problem” and can result in a partner not getting the full benefit of the adjustment. Organizations have filed comments with suggested solutions. Legislative proposals have also been introduced to try to address this inequity, but to date, none of the proposals have been enacted into law.⁵⁵

Step 6: Final Partnership Adjustment

Finally, we come to the end of the administrative road—the FPA. The FPA, in one respect, is the analog

to a statutory notice of deficiency in that the partnership receiving such notice has 90 days in which to petition the U.S. Tax Court for readjustment of the reviewed year.⁵⁶ Further, like a statutory notice of deficiency, if the partnership does not file a petition within the 90-day period, the IRS may assess the Imputed Underpayment, any penalties determined at the partnership level, and interest.⁵⁷

Unlike a statutory notice of deficiency, a partnership also has the option within the 90-day period to deposit with the IRS an amount equal to the liability in issue and file a petition for readjustment in district court or the Court of Federal Claims.⁵⁸ A partnership cannot otherwise bring a refund suit in these forums.

A partnership can also push out liability to the reviewed year partners with or without challenging any adjustments in court. A FPA gives the partnership 45 days in which to make a push-out election under Code Sec. 6226.⁵⁹ The push-out election requires partners to take into account partnership adjustments and any penalties determined at the partnership level by computing each partner’s “correction amount,” *i.e.*, what the partner’s tax liability would have been for the reviewed year and any subsequent year based on the partner’s share of the partnership adjustments, and reporting such liability on return for the reporting year.⁶⁰ That is often preferable to the partnership paying an Imputed Underpayment calculated at the highest rate under Chapter 1 or 11 in effect for the relevant year.

But it comes at a cost. First, partners pay interest at the regular underpayment rate plus two percent.⁶¹ Second, a push-out election is administratively cumbersome. The Partnership Representative must electronically submit to the IRS Form 8988, *Election to Alternative to Payment of the Imputed Underpayment—IRC Section 6226*, including a list of partners during the partnership’s reviewed year and their allocable share of the partnership adjustments.⁶² Then, the Partnership Representative must issue to each partner during the reviewed year Form 8986, *Partner’s Share of Adjustments(s) to Partnership-Related Items(s) (Required Under Sections 6226 and 6227)*, and electronically submit to the IRS Form 8985, *Pass-Through—Statement Transmittal/Partnership Adjustment Tracking Report (Required under Sections 6226 and 6227)* and the Forms 8986 within 60 days after the partnership adjustments become final.⁶³ Partnership adjustments are final upon the expiration of the 90-day period to challenge the FPA in court or when the court’s decision becomes final.⁶⁴

For the partnership that does not push out or petition a court for readjustment, it has 10 days in which to pay

the assessed Imputed Underpayment following notice and demand for payment. Thereafter, the partnership liability accrues interest at the underpayment rate plus two percent.⁶⁵ More notably, the IRS may make an assessment against each partner as of the close of the adjustment year equal to the partner's proportionate share of the partnership liability.⁶⁶

Step 7: Petitioning the Tax Court

While a BBA partnership has the option to file a petition for readjustment of the FPA in the U.S. Tax Court, district court, or the Court of Federal Claims, most petitions are filed in the U.S. Tax Court at least in part for the obvious reason that there is no deposit requirement. A court has jurisdiction over all Partnership-Related Items for the taxable year to which the FPA relates and the proper allocation of such items as well as the amount of the

Imputed Underpayment, penalties, additions to tax, and additional amounts.⁶⁷

Although U.S. Tax Court rules require that the caption list the name of the partnership and the name of the Partnership Representative, only the BBA partnership is party to the suit.⁶⁸ Indeed, there is no provision under the BBA or U.S. Tax Court rules that provide for participation by a partner. Nonetheless, a decision of the U.S. Tax Court is binding on the partnership and the partners with respect to the BBA partnership.⁶⁹

Conclusion

As you can see, the BBA audit follows a long and winding road and may take years to complete. Patience and regular communication between IRS examiners and taxpayers are essential to stay on track and move forward efficiently and effectively.

ENDNOTES

¹ Pub. L. No. 114-74.

² United States Government Accountability Office, *Large Partnerships: With Growing Number of Partnerships, IRS Needs to Improve Audit Efficiency*, GAO-14-732 (Sep. 2014).

³ *Id.* at 37.

⁴ *Id.*

⁵ Code Sec. 6223(a).

⁶ Code Secs. 6225 and 6226.

⁷ Code Sec. 6221(b).

⁸ Code Secs. 6221(b)(1)(B) and (C).

⁹ Code Sec. 6221(b)(1)(D).

¹⁰ Code Sec. 6221(a).

¹¹ Code Sec. 6241(2)(B).

¹² Code Sec. 6241(2)(B); Reg. §301.6241-1(a)(6)(ii).

¹³ Code Sec. 6223(b).

¹⁴ IRS LTR 2205-D.

¹⁵ Reg. §301.6223-1(f); IRM 4.31.9.7.6.8 (Oct. 29, 2021).

¹⁶ If the AAR is filed electronically, the partnership files Form 1065 with the amended return box checked, and attaches Form 8082, *Notice of Inconsistent Position or Administrative Adjustment Request*, with the BBA AAR box checked. If the AAR is paper filed, the partnership files Form 1065X and completes the appropriate sections for a BBA AAR. IRM 4.31.9.7.7.1 (Jan. 24, 2024).

¹⁷ Code Sec. 6227(c); IRM 4.31.9.7.7.1 (Jan. 24, 2024).

¹⁸ IRM 4.31.9.7.10.1 (Oct. 29, 2021).

¹⁹ IRS LTR 5893 (issued to the BBA partnership) and LTR 5893-A (issued to the Partnership Representative).

²⁰ IRM 4.31.9.8.1.2 (Jan. 24, 2024).

²¹ IRM 4.31.9.8 (Oct. 29, 2021).

²² Code Sec. 6235.

²³ IRM 4.31.9.8.4.3 (Jan. 24, 2024).

²⁴ IRM 4.31.9.8.4 (Oct. 29, 2021).

²⁵ IRM 4.31.9.10.1 (Jan. 24, 2024).

²⁶ Code Sec. 6225.

²⁷ Reg. §301.6225-1(g)(2).

²⁸ www.irs.gov/businesses/partnerships/how-to-figure-an-imputed-underpayment.

²⁹ Reg. §301.6225-1(b)(1)(i).

³⁰ Reg. §301.6225-1(c)(2).

³¹ Reg. §301.6225-1(c)(4).

³² Reg. §301.6225-1(c)(3).

³³ Reg. §301.6225-1(c)(5).

³⁴ Reg. §301.6225-1(d)(1).

³⁵ Reg. §301.6225-1(d)(2)(ii).

³⁶ Reg. §301.6225-1(d)(2)(iii).

³⁷ Reg. §301.6225-1(b)(2).

³⁸ Reg. §301.6225-1(e)(2).

³⁹ Reg. §301.6225-1(b)(4).

⁴⁰ Reg. §301.6225-1(f).

⁴¹ The NOPPA package consists of: (1) Form 14792, Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts; (2) Letter 5892, Notice of Proposed Partnership Adjustments- Partnership; (3) Letter 5892-A, Notice of Partnership Adjustments-Partnership Representative, and (4) Form 886-A, *Explanation of Adjustments*, for both substantive issues and imputed underpayment amount. IRM 4.31.9.10.3 (Oct. 29, 2021).

⁴² See www.irs.gov/businesses/partnerships/bba-partnership-audit-process.

⁴³ Code Sec. 6603(d); Rev. Proc. 2005-18, §7.01.

⁴⁴ See www.irs.gov/businesses/partnerships/electronic-submission-of-forms-by-audited-bba-partnerships-and-their-pass-through-partners.

⁴⁵ Reg. §301.6225-2(c)(3)(ii).

⁴⁶ Code Sec. 6235(a)(2).

⁴⁷ Code Sec. 6225(c). The above modification types apply in the BBA exam context. Note, however, that Reg. §301.6227-2(a)(2) does not

permit the following types of modification requests when an AAR is filed: (1) Amended Return; (2) Alternative Procedure to Amended Return; (3) Number and Composition of Imputed Underpayments; and (4) Closing Agreements.

⁴⁸ Code Sec. 6225(c)(6).

⁴⁹ Code Sec. 6225(c)(2)(A); Reg. §301.6225-2(d)(2).

⁵⁰ Code Sec. 6225(c)(2)(B); Reg. §301.6225-2(d)(2)(x).

⁵¹ Code Sec. 6225(c)(3); Reg. §301.6225-2(d)(3).

⁵² Code Sec. 6225(c)(4)(A); Reg. §301.6225-2(d)(4).

⁵³ *Id.*

⁵⁴ Reg. §301.6227-3(b) defines "reporting year" as the partner's tax year that includes the date on which the BBA partnership furnishes Forms 9986 to its reviewed year partners.

⁵⁵ For example, see ABA Tax Section, Comments on the BBA Stranded Overpayment Problem (March 24, 2021); see also General Explanations of the Administration's Fiscal Revenue Proposals (May 2021).

⁵⁶ Code Sec. 6234(a)(1).

⁵⁷ Code Secs. 6232(b)(1) and 6233(a).

⁵⁸ Code Secs. 6234(a)(1) and (b).

⁵⁹ Code Sec. 6226(a)(1).

⁶⁰ Code Secs. 6226(a)(1), (b), and (c)(1). If a partner's correction amount is negative, that amount is treated like a nonrefundable tax credit in the reporting year. Reg. §301.6226-3(b).

⁶¹ Code Sec. 6226(c)(2).

⁶² Reg. §§301.6226-2(a) and (e).

⁶³ Reg. §§301.6226-2(a) and (b).

⁶⁴ Reg. §301.6226-2(b).

⁶⁵ Code Sec. 6232(f)(1)(A).

⁶⁶ Code Sec. 6232(f)(1)(B).

⁶⁷ Code Secs. 6234(b) and (c).

⁶⁸ Code Sec. 6234(a); T.C. Rule 255.1(d).

⁶⁹ Code Sec. 6223(b)(2); T.C. Rule 255.7.

This article is reprinted with the publisher's permission from JOURNAL OF TAX PRACTICE & PROCEDURE, a quarterly journal published by CCH Incorporated. Copying or distribution without the publisher's permission is prohibited. To subscribe to JOURNAL OF TAX PRACTICE & PROCEDURE or other journals, please call 1-800-344-3734. All views expressed in this publication are those of the author and not necessarily those of the publisher or any other person.



Wolters Kluwer