

item, may not be asserted in the partnership level proceeding, but may be asserted through separate refund actions following assessment and payment. See section 6230(c)(4). Partner level defenses are limited to those that are personal to the partner or are dependant upon the partner's separate return, and cannot be determined at the partnership level. Examples of these determinations are: whether any applicable threshold underpayment of tax has been met with respect to the partner or whether the partner has met the criteria of section 6664(b)(penalties applicable only where return is filed), or section 6664(c)(1)(reasonable cause exception) subject to partnership level determinations as to the applicability of section 6664(c)(2).

(e) *Cross reference.* See §§ 301.6231(c)-1T and 301.6231(c)-2T for special rules relating to certain applications and claims for refund based on losses, deductions, or credits from abusive tax shelter partnerships.

[T.D. 8128, 52 FR 6781, Mar. 5, 1987, as amended by T.D. 8808, 64 FR 3838, Jan. 26, 1999]

§ 301.6222(a)-1T Consistent treatment of partnership items (temporary).

(a) *In general.* The treatment of a partnership item on the partner's return shall be consistent with the treatment of that item by the partnership in all respects including the amount, timing, and characterization of the item.

(b) *Treatment must be consistent with partnership return.* The treatment of a partnership item on the partner's return shall be consistent with the treatment of that item on the partnership return. Thus, a partner who treats an item consistently with a schedule or other information furnished to the partner by the partnership has not satisfied the requirement of paragraph (a) of this section if the treatment of that item is inconsistent with the treatment of the item on the partnership return actually filed. For rules relating to the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule, see § 301.6222(b)-3T.

(c) *Examples.* The following examples illustrate the principles set forth in this section.

Example 1. B is a partner of Partnership P. Both B and P use the calendar year as the taxable year. In December 1983, P receives an advance payment for services to be performed in 1984 and reports this amount as income for calendar year 1983. However, B reports B's distributive share of this amount on B's income tax return for 1984 and not on B's return for 1983. B's treatment of this partnership item is inconsistent with the treatment of the item by P.

Example 2. Partnership P incurred certain start-up costs before P was actively engaged in its business. P capitalized these costs. C, a partner in P, deducted C's proportionate share of these start-up costs. C's treatment of the partnership expenditure is inconsistent with the treatment of that item by P.

Example 3. D is a partner in partnership P which reports a loss of \$100,000 on its return, \$5,000 of which it reports on the Schedule K-1 attached to its return as D's distributive share. However, P reports \$15,000 as D's distributive share of P's loss on the Schedule K-1 furnished to D. D reports the \$15,000 loss on D's income tax return. D has not satisfied the consistency requirement. See, however, § 301.6222 (b)-3 for an election to be treated as having reported the inconsistency.

[T.D. 8128, 52 FR 6781, Mar. 5, 1987]

§ 301.6222(a)-2T Application of consistency and notification rules to indirect partners (temporary).

(a) *In general.* The consistency requirement of § 301.6222(a)-1T is generally applied with respect to the source partnership. For purposes of this section, the term "source partnership" means the partnership (within the meaning of section 6231(a)(1)) from which the partnership item originates.

(b) *Indirect partner files consistently with source partnership.* An indirect partner who treats an item from a source partnership in a manner which is consistent with the treatment of that item on the return of the source partnership satisfies the consistency requirement of section 6222(a) regardless of whether the indirect partner treats that item in a manner which is consistent with the treatment of that item by the pass-thru partner through which the indirect partner holds the interest in the source partnership. Under these circumstances, therefore, the Service shall not send to the indirect