

6223(c)(3) and § 301.6223(c)-1T at least 30 days before the date on which the agreement is entered into. However, if, in addition to the interest in the partnership held through the pass-thru partner entering into a settlement agreement, an indirect partner holds a separate interest in that partnership, either directly or indirectly through a different pass-thru partner, the indirect partner shall not be bound by that settlement agreement with respect to the interests held directly or indirectly through a pass-thru partner other than the pass-thru partner entering into the settlement agreement.

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. Partnership J is a partner in partnership P. C is a partner in J but has not been identified as provided in section 6223(c)(3) and § 301.6223(c)-1T. The only interest that C holds in P is through J. The tax matters partner of J enters into a settlement agreement with the Service with respect to partnership items arising from P. C is bound by the settlement agreement entered into by the tax matters partner of J.

(b) *Person in pass-thru partner authorized to enter into settlement agreement that binds indirect partners.* In the case of a pass-thru partner that is—

(1) A partnership within the meaning of section 6231(a)(1), the tax matters partner of that partnership;

(2) A partnership other than a partnership described in paragraph (b)(1) of this section, any general partner of that partnership;

(3) An S corporation subject to the provisions of subchapter D of chapter 63 of the Code, the tax matters person of that S corporation;

(4) An S corporation other than an S corporation described in paragraph (b)(3) of this section, any officer of that S corporation; or

(5) A trust, estate, or nominee, any person authorized in writing to act on behalf of that trust, estate, or nominee may enter into a settlement agreement with the Service on behalf of its respective entity that would bind the unidentified indirect partners that hold a partnership interest through the pass-thru partner.

[T.D. 8128, 52 FR 6787, Mar. 5, 1987]

§ 301.6224(c)-3T Consistent settlement terms (temporary).

(a) *In general.* If the Service enters into a settlement agreement with any partner with respect to partnership items, the Service shall offer to any other partner who so requests in accordance with paragraph (c) of this section settlement terms which are consistent with those contained in the settlement agreement entered into.

(b) *Requirements for consistent settlement terms—(1) In general.* Consistent settlement terms are those based on the same determinations with respect to partnership items. However, consistent settlement terms also may include partnership level determinations of any penalty, addition to tax, or additional amount that relates to partnership items. Settlements with respect to partnership items shall be self-contained; thus, a concession by one party with respect to a partnership item may not be based upon a concession by another party with respect to any item that is not a partnership item other than any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. Consistent agreements, whether comprehensive or partial, must be identical to the original settlement (that is, the settlement upon which the offered settlement terms are based). A consistent agreement must mirror the original settlement and may not be limited to selected items from the original settlement. Once a partner has settled a partnership item, or penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, that partner may not subsequently request settlement terms consistent with a settlement that contains the previously settled item. The requirement for consistent settlement terms applies only if—

(i) The items were partnership items (and any related penalty, addition to tax, or additional amount) for the partner entering into the original settlement immediately before the original settlement; and

(ii) The items are partnership items (and any related penalty, addition to

tax, or additional amount) for the partner requesting the consistent settlement at the time the partner files the request.

(2) *Effect of consistent agreement.* Consistent settlement terms are reflected in a consistent agreement. A consistent agreement is not a settlement agreement which gives rise to further consistent settlement rights because it is required to be given without volitional agreement of the Secretary. Therefore, a consistent agreement required to be offered to a requesting taxpayer is not a settlement agreement under section 6224(c)(2) of the Internal Revenue Code, or paragraph (c)(3) of this section which starts a new period for requesting consistent settlement terms. For all other purposes of the Internal Revenue Code, however, (e.g., binding effect under section 6224(c)(1), and conversion to nonpartnership items under section 6231(b)(1)(C)) a consistent agreement is treated as a settlement agreement.

(c) *Time and manner of requesting consistent settlements*—(1) *In general.* A partner desiring settlement terms consistent with the terms of any settlement agreement entered into between any other partner and the Service shall submit a written statement to the Internal Revenue Service office that entered into the settlement.

(2) *Contents of statement.* Except as otherwise provided in instructions to the taxpayer from the Service, the written statement described in paragraph (c)(1) of this section shall—

(i) Identify the statement as a request for consistent settlement terms under section 6224(c)(2),

(ii) Contain the name, address, and taxpayer identification number of the partnership and of the partner requesting the settlement offer (and, in the case of an indirect partner, of the pass-thru partner through which the indirect partner holds an interest),

(iii) Identify the earlier agreement to which the request refers, and

(iv) Be signed by the partner making the request.

(3) *Time for filing request.* The statement shall be filed not later than the later of—

(i) The 150th day after the day on which the notice of final partnership

administrative adjustment is mailed to the tax matters partner, or

(ii) The 60th day after the day on which the settlement agreement was entered into.

(d) *Examples.* The following examples illustrate the principles set out in this section.

Example 1. The Service seeks to disallow a \$100,000 loss reported by Partnership P. The Service agrees to a settlement with X, a partner in P, in which the Service allows 60 percent of the loss, accepts the treatment of all other partnership items on the partnership return, and imposes a penalty for negligence related to the loss disallowance. Partner Y, which owns a 10 percent interest in the partnership, requests settlement terms which are consistent with the settlement made between X and the Service. The items are partnership items (and a related penalty) for X immediately before X enters into the settlement agreement and are partnership items (and a related penalty) for Y at the time of the request. The Service must offer Y settlement terms allowing a \$6,000 loss, a negligence penalty on the \$4,000 disallowance, and otherwise reflecting the treatment of partnership items on the partnership return.

Example 2. F files inconsistently with partnership P and reports the inconsistency. The Service notifies F that it will treat all partnership items arising from P as nonpartnership items with respect to F. Later, the Service enters into a settlement with F on these items. The Service is not required to offer the other partners of P settlement terms consistent with the settlement reached between F and the Service because at the time of the settlement the items arising from P are no longer partnership items with respect to F.

Example 3. G, a partner in Partnership P, filed suit under section 6228(b) after the Service failed to allow an administrative adjustment request with respect to a partnership item arising from P for a taxable year. Under section 6231(b)(1)(B), the partnership items of G for the partnership taxable year became nonpartnership items as of the date the suit was filed. After G filed suit, another partner and the Service entered into a settlement agreement with respect to items arising from P in that year. G is not entitled to consistent settlement terms because the items arising from P are no longer partnership items with respect to G.

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