

E. On September 1, 1985, D sells his remaining .5 profits interest in P to F. For purposes of sections 6223(b) and 6231(a)(11), D had a .5 percent profits interest in P for 1985.

Example 6. Assume the same facts as in example 5, except that on January 1, 1985, D also held a 1 percent profits interest in partnership P through T, a pass-thru partner which also uses the calendar year as the taxable year. In addition to the sale to E on August 1, 1985, D sold a portion of his interest in T on December 1, 1985, such that after the sale, D held a .2 percent profits interest in P through T. D made no other transfers of interests in either P or T. For purposes of sections 6223(b) and 6231(a)(11), D had a .7 percent profits interest in P for 1985.

[T.D. 8128, 52 FR 6794, Mar. 5, 1987]

§ 301.6231(e)-1T Effect of a determination with respect to a nonpartnership item on the determination of a partnership item (temporary).

The determination of an item after it has become a nonpartnership item with respect to a partner is not controlling in the determination of that item with respect to other partners. Thus, for example, the determination by a court in a separate proceeding relating to a partner that a certain partnership expenditure was deductible does not bind either the Service or the other partners in a later partnership or other proceeding.

§ 301.6231(e)-2T Judicial decision not a bar to certain adjustments (temporary).

A court decision with respect to a partner's income tax liability attributable to nonpartnership items shall not be a bar to further proceedings with respect to that partner's income tax liability if that partner's partnership items become nonpartnership items after the appropriate time to include such nonpartnership items in the earlier court proceeding has passed. Thus, the Service could issue a later deficiency notice for the same taxable year with respect to that partner or that partner could bring a refund suit with respect to those items that have become nonpartnership items.

[T.D. 8128, 52 FR 6794, Mar. 5, 1987]

§ 301.6231(f)-1T Disallowance of losses and credits in certain cases (temporary).

(a) *Application of section.* This section applies if—

(1) A partnership, whether domestic or foreign, that is required to file a return under section 6031 for a taxable year fails to file the return within the time prescribed, and,

(2) At any time after the close of that taxable year, either—

(i) The tax matters partner of that partnership resides outside the United States, or

(ii) The books and records of that partnership are maintained outside the United States.

(b) *Computational adjustment permitted if return is not filed after mailing of notice.* Except as otherwise provided in paragraph (c) of this section, if—

(1) This section applies with respect to a partnership for a partnership taxable year,

(2) The Service mails a notice to a partner that the losses and credits arising from that partnership for that year will be disallowed to that partner unless the partnership files a return for that year within 60 days after the date on which the notice is mailed, and

(3) The partnership fails to file a return for that year within that 60-day period, the Service may, without conducting a partnership-level proceeding, mail a notice of computational adjustment to that partner to reflect the disallowance of any loss (including a capital loss) or credit arising from that partnership for that year.

(c) *Restriction on notices under paragraph (b).* Neither the notice referred to in paragraph (b)(2) of this section nor the notice of computational adjustment referred to in paragraph (b) of this section may be mailed on a day on which—

(1) The tax matters partner of the partnership resides within the United States, and

(2) The books and records of the partnership are maintained within the United States.

Thus, if this section applies with respect to a partnership for a taxable year solely because the tax matters

partner of that partnership resided outside the United States for a period after the close of that taxable year and the tax matters partner later takes up residence within the United States, no notice may be mailed under paragraph (b) of this section while the tax matters partner resides within the United States.

(d) *No disallowance in certain circumstances.* If the person to whom the notice referred to in paragraph (b)(2) of this section establishes to the satisfaction of the Service—

(1) That the losses and credits arising from the partnership for the year are proper, and

(2) That the partner has made a good faith effort to have the partnership file the required return,

the Service may allow the losses and credits in whole or in part.

[T.D. 8128, 52 FR 6794, Mar. 5, 1987]

§ 301.6233-1T Extension to entities filing partnership returns, etc. (temporary).

(a) *Entities filing a partnership return.* Except as provided in paragraph (d)(1) of this section, the provisions of subchapter C of chapter 63 of the Code (“subchapter C”) and the regulations thereunder shall apply with respect to any taxable year of an entity for which such entity files a partnership return as well as to such entity’s items for that taxable year and to any person holding an interest in such entity at any time during that taxable year. Any final partnership administrative adjustment or judicial determination resulting from a proceeding under subchapter C with respect to such taxable year may include a determination that the entity is not a partnership for such taxable year as well as determinations with respect to all items of the entity which would be partnership items, as defined in section 6231(a)(3) and the regulations thereunder, if such entity had been a partnership in such taxable year (including, for example, any amounts taxable to an entity determined to be an association taxable as a corporation). Thus, a final determination under subchapter C that an entity that filed a partnership return is an association taxable as a corporation will serve as a basis for a computational ad-

justment reflecting the disallowance of any loss or credit claimed by a purported partner with respect to that entity.

(b) *Entities filing an S corporation return.* Except as provided in paragraph (d)(2) of this section, the provisions of subchapter D of chapter 63 of the Code (“subchapter D”) and the regulations thereunder shall apply with respect to any taxable year of an entity for which such entity files a return as an S corporation as well as to such entity’s items for that taxable year and to any person holding an interest in such entity at any time during that taxable year. Any final S corporation administrative adjustment or judicial determination resulting from a proceeding under subchapter D with respect to such taxable year may include a determination that the entity is not an S corporation for such taxable year as well as determinations with respect to all items of the entity which would be subchapter S items, as defined in section 6245 and the regulations thereunder, if such entity had been an S corporation for such taxable year (including, for example, any amounts taxable to an entity determined to be taxable as a C corporation).

(c) *Partnership or S corporation return filed but no entity found to exist—(1) Partnership return filed.* Paragraph (a) of this section shall apply where a partnership return is filed for a taxable year but it is determined that there is no entity for such taxable year. For purposes of applying paragraph (a) of this section, the partnership return shall be treated as if it was filed by an entity. However, any final partnership administrative adjustment or judicial determination resulting from a proceeding under subchapter C with respect to such taxable year may also include a determination that there is no entity for such taxable year.

(2) *S corporation return filed.* Paragraph (b) of this section shall apply where an S corporation return is filed for a taxable year but it is determined that there is no entity for such taxable year. For purposes of applying paragraph (b) of this section, the S corporation return shall be treated as if it was filed by an entity. However, any final S corporation administrative adjustment