

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

or judicial determination resulting from a proceeding under subchapter D with respect to such taxable year may also include a determination that there is no entity for such taxable year.

(d) *Exceptions*—(1) *Partnership proceedings*. Paragraph (a) of this section shall not apply to:

(i) Entities for any taxable year in which such entity would be excepted from the provisions of subchapter C under section 6231(a)(1)(B) and the regulations thereunder (relating to the exception for small partnerships) if such entity were a partnership for such taxable year, and

(ii) Entities for any taxable year for which a partnership return was filed for the sole purpose of making the election described in section 761(a).

(2) *S corporation proceedings*. [Reserved]

(e) *Effective dates*. Paragraphs (a), (c)(1), and (d)(1) of this section shall apply with respect to any taxable year beginning after September 3, 1982, and with respect to any taxable year beginning on or before and ending after September 3, 1982, if with respect to that taxable year there is an agreement entered into pursuant to section 407(a)(3) of the Tax Equity and Fiscal Responsibility Act of 1982. Paragraphs (b) and (c)(2) of this section shall apply with respect to any taxable year beginning after December 31, 1982.

[T.D. 8128, 52 FR 6795, Mar. 5, 1987]

§ 301.6241-1T Tax treatment determined at corporate level.

(a) *In general*. For a taxable year of an S corporation beginning after December 31, 1982, a shareholder's treatment of a subchapter S item (as defined in § 301.6245-1T) on the shareholder's return may not be changed except as provided in sections 6241-6245 of the Code and the regulations thereunder. Thus, for example, if a shareholder treats an item on the shareholder's return consistently with the treatment of that item on the S corporation return, the Internal Revenue Service generally cannot adjust the treatment of that item on the shareholder's return except through a corporate-level proceeding. Similarly, the shareholder may not put a subchapter S item in issue in a proceeding relating to nonsubchapter S

items. For example, the shareholder may not offset a potential increase in taxable income based on changes in nonsubchapter S items by a potential decrease based on subchapter S items.

(b) *Restrictions inapplicable after items become nonsubchapter S items*. Section 6241 and paragraph (a) of this section cease to apply to items arising from an S corporation with respect to a shareholder when those items cease to be subchapter S items with respect to that shareholder under section 6231(b)(1) (as extended to and made applicable to subchapter S items under section 6244).

(c) *S corporation*—(1) *In general*. For purposes of subchapter D of chapter 63 of the Code, except as provided in paragraph (c)(2) of this section, the term "S corporation" means any corporation required to file a return under section 6037(a).

(2) *Exception for small S corporations*—(i) *Effective date*. This paragraph (c)(2) shall apply to any taxable year of an S corporation the due date of the return for which (determined without regard to extensions) is on or after January 30, 1987.

(ii) *Five or fewer shareholders*. For purposes of this paragraph (c), an S corporation shall not include a small S corporation. A small S corporation is defined as an S corporation with 5 or fewer shareholders, each of whom is a natural person or an estate. For purposes of this paragraph (c)(2), a husband and wife (and their estates) are treated as one shareholder. If stock (owned other than by a husband and wife) is owned by tenants in common or joint tenants, each tenant in common or joint tenant is considered to be a shareholder of the corporation. The limitation is applied to the number of natural persons and estates that were shareholders at any one time during the taxable year of the corporation. Thus, for example, an S corporation that at no time during the taxable year had more than 5 shareholders may be treated as a small S corporation even if, because of transfers of interests in the corporation, 6 or more natural persons or estates owned stock in the corporation for some portion of the taxable year.