

§ 301.6231(c)-1

26 CFR Ch. I (4-1-02 Edition)

this section, then the partnership interest shall be treated as separately owned by the identified spouse.

(4) *Example.* The following example illustrates the application of paragraph (a)(3) of this section:

Example. Wife owns an interest in ABC Partnership and is identified on the Schedule K-1 of the partnership return. Wife and Husband live in a community property state. The partnership return of ABC partnership does not identify Husband, and Husband is not identified as a partner entitled to notice as provided in § 301.6223(c)-1(b). Pursuant to paragraph (a)(3) of this section, the partnership interest of Wife shall be treated as separately owned by Wife.

(b) *Notice and counting rules—(1) In general.* Except as provided in paragraph (b)(2) of this section, for purposes of applying section 6223 (relating to notice to partners of proceedings) and section 6231(a)(1)(B) (relating to the exception for small partnerships), spouses holding a joint interest in a partnership shall be treated as one partner. Except as provided in paragraph (b)(2) of this section, the Internal Revenue Service or the tax matters partner may send any required notice to either spouse.

(2) *Identified spouse entitled to notice.* For purposes of applying section 6223 (relating to notice to partners of proceeding) for a partnership taxable year, an individual who holds a joint interest in a partnership with a spouse who is entitled to notice under section 6223 shall be entitled to receive separate notice under section 6223 if such individual—

(i) Is identified as a partner on the partnership return for that taxable year; or

(ii) Is identified as a partner entitled to notice as provided in § 301.6223(c)-1(b).

(c) *Conversion of partnership items—(1) In general.* If spouses holding a joint interest in a partnership are treated as separate partners under this section, then section 6231(b) (relating to the conversion of partnership items) shall be applied separately to each spouse.

(2) *Example.* The following example illustrates the application of paragraph (c) of this section:

Example. Husband and Wife own a joint interest in XYZ Partnership. The partnership return identifies both spouses on the Schedule K-1. Under this section, each spouse is treated as a separate partner. If Wife enters into a settlement agreement, Wife's partnership items convert to nonpartnership items pursuant to section 6231(b)(1)(C). Accordingly, Wife no longer has the right to participate in the partnership proceeding subsequent to entering into the settlement agreement. Pursuant to paragraph (c) of this section, however, the partnership items of Hus-

band are not affected by the conversion of the partnership items of Wife, and Husband continues to have the right to participate in the partnership proceeding. This result is the same regardless of whether the partnership items are reported on a joint return or on separate returns.

(d) *Cross-reference.* See § 301.6231(a)(2)-1(a) for special rules relating to spouses who file joint returns with individuals holding a separate interest in a partnership.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(12)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50559, Oct. 4, 2001]

§ 301.6231(c)-1 Special rules for certain applications for tentative carryback and refund adjustments based on partnership losses, deductions, or credits.

(a) *Application subject to this section.* This section applies in the case of an application under section 6411 (relating to tentative carryback and refund adjustments) based on losses, deductions, or credits of a partnership if the Commissioner, or the Commissioner's delegate, determines, after review of the available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

(1) A gross valuation overstatement; or

(2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.). This section applies only with respect to an application based upon the original reporting on the partner's income tax return of partnership losses, deductions, or credits. Thus, this section does not apply to a request for administrative adjustment under section 6227 through which a partner seeks to change the partner's reporting of partnership items on the partner's income tax return (or on an earlier request for administrative adjustment).

(b) *Determination of special enforcement area.* In the case of an application under section 6411 described in paragraph (a) of this section, precluding an assessment under section 6225 that would be permitted under section 6213(b)(3) (relating to assessments arising out of tentative carryback or refund adjustments) with respect to any amount applied, credited, or refunded as a result of the application may encourage the proliferation of abusive tax shelter partnerships and make the eventual collection of taxes due more difficult. Consequently, the Secretary hereby determines that such applications present special enforcement considerations within the meaning of section 6231(c)(1)(E).

(c) *Assessment permitted under section 6213(b)(3).* Notwithstanding section 6225 (relating to restrictions on assessment with respect to partnership items), an assessment that would be permitted under section 6213(b)(3) with respect to any amount applied, credited, or refunded as a result of an application described in paragraph (a) of this section may be made before there is a final partnership-level determination with respect to the losses, deductions, or credits on which the application is based. As provided in section 6213(b)(1), the Internal Revenue Service shall mail notice of any such assessment to the partner filing the application. The notice shall also inform the partner of the partner's limited right to elect to treat items as nonpartnership items as provided in paragraph (d) of this section.

(d) *Limited right to elect to treat items as nonpartnership items—*(1) *In general.* A partner to whom the Internal Revenue Service mails a notice of suspension of action on a refund claim under paragraph (c) of this section may elect in accordance with this paragraph (d) to have all partnership items for the partnership taxable year in which the losses, deductions, or credits at issue arose treated as nonpartnership items.

(2) *Time and place of making election.* The election shall be made by filing a statement with the Internal Revenue Service office that mailed the notice of suspension. The statement may be filed at any time—

(i) After the date which is one year after the date on which the partnership return was filed for the partnership taxable year in which the items at issue arose; and

(ii) Before the date on which the Internal Revenue Service mails to the tax matters partner the notice of final partnership administrative adjustment for the partnership taxable year in which the items at issue arose. For purposes of this paragraph (d)(2), a partnership return filed before the last day prescribed by law for its filing (determined without regard to extensions) shall be treated as filed on the last day.

(3) *Contents of the statement.* The statement shall—

(i) Be clearly identified as an election to have partnership items treated as nonpartnership items because of notification of an assessment under section 6213(b)(3);

(ii) Identify the partnership by name, address, and taxpayer identification number;

(iii) Identify the partner making the election by name, address, and taxpayer identification number;

(iv) Specify the partnership taxable year to which the election applies; and

(v) Be signed by the partner making the election.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(c)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50559, Oct. 4, 2001]

§ 301.6231(c)-2 Special rules for certain refund claims based on losses, deductions, or credits from abusive tax shelter partnerships.

(a) *Claims subject to this section.* This section applies in the case of a claim for credit or refund based on losses, deductions or credits of a partnership if the Commissioner, or the Commissioner's delegate, determines, after review of available relevant information, that it is highly likely that a person described in section 6700(a)(1) made, with respect to the partnership—

(1) A gross valuation overstatement; or

(2) A false or fraudulent statement with respect to the tax benefits to be