The Partnership Audit Rules

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Overview

- Background – How did we get here?
- Overview of the Partnership Audit Rules
- Audits
  - Scope of the Audit
  - Election Out
  - Partnership Representative (Designation, Resignation and Revocations)
  - Statute of Limitations
  - Penalties

Overview

- Assessment and Payment
  - Calculation of Imputed Underpayments
  - Modification of Imputed Underpayments
- Judicial Review
- Push-Out Election

How did we get here?
The Challenges Before TEFRA

- Pre-TEFRA
  - Audits were conducted at the partner-level; if the IRS wanted to adjust a partnership item, IRS had to audit each partner individually
  - Created duplication of efforts
  - Led to inconsistencies in how partners were treated

How did we get here? The Challenges of TEFRA

- TEFRA
  - Enacted in 1982 to address inconsistent partner treatment and inefficiencies of partner-level audits by allowing the IRS to audit partnership items at the partnership level.
  - Two Problems with TEFRA:
    - Procedures are administratively complex. Tax Court described the TEFRA rules as "distressingly complex and confusing."
    - Tax is assessed and collected at the partner level. In complex tiered-entity structures, it is time consuming and difficult for the IRS to identify and assess the tax from the ultimate tax-paying partners.

Source of the Partnership Audit Rules

- Enacted Legislation:
  - Bipartisan Budget Act of 2015 (the "BBA") as modified by the Protecting Americans from Tax Hikes Act (the "Path Act")
- Tax Technical Corrections Act of 2016
- Tax Technical Corrections Act of 2018
- Regulations
  - June 2017: proposed regulation with several bracketed items
  - Nov. 2017: proposed regulations on coordination for international issues
  - Dec. 2017: proposed regulations on "push out" through tiers and administrative issues
  - Jan. 2018: final regulations on electing out
  - Aug. 2018: final regulations on partnership representative
  - Aug. 2018: proposed regulations withdrawn and reproposed to reflect changes made by Technical Corrections Act of 2018

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