

# Exploring the Proposed BBA Partnership Audit Regulations

D.C. Bar Panel  
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Washington, D.C.

**Moderator:**

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# Outline

- Update on Technical Corrections
- Proposed Regulations
- Examination and Collections: What Open Issues Remain?
- Updating the Partnership/LLC Agreements: What Steps Should Be Taken Now?

# Timeline

- Bipartisan Budget Act of 2015 (November 15, 2015)
- PATH Act of 2015 (December 15, 2015)
- IRS Notice 2016-23 (March 21, 2016)
- Joint Committee on Taxation Blue Book (March 14, 2016)
- Temporary Regulations Section 301.9100-22T (T.D. 9780) (August 5, 2016)
- Tax Technical Corrections Act of 2016 (December 6, 2016)
- Proposed Partnership Audit Rules (January 19, 2017)

# Update on Technical Corrections

- Broader scope of new procedures
- Computation of entity-level tax
- Push-out method for tiered partnerships
- Overpayments under push-out
- Pull-in method (limited scope amended returns)

# Proposed Regulations

- Election out
  - Made on timely filed return, year-by-year basis
  - Must notify partners
  - Eligible partners only as identified in statute
- Partnership Representative
  - Must be identified on the return
  - Can only be changed with valid AAR or after audit commences
  - If the PR is disqualified by the IRS or there is confusion, the IRS can select

# Proposed Regulations

- AAR and Scope
  - AARs showing an imputed underpayment
  - Refund AARs
  - Scope of items adjusted at partnership-level
  - Limited to chapter 1 tax
  - Partner-level issues/penalty defenses
- Imputed Underpayment and Mods
  - Basic description of what the IU is
  - Netting of adjustments
  - Modifications
  - Adjustments that do not result in an IU

# Proposed Regulations

- Push out
  - All adjustments are pushed out, but only increases taken
  - Making election versus sending statements
  - Safe harbor
- Cease to Exist
  - When it may be invoked
  - In the IRS discretion
  - Forces the push out on the adjustment year partners or the most recent partners

# Examination and Collections: What Open Issues Remain?

- Will partnership examinations be any different?
- Who should be the partnership representative?
- Role of partnership representative during an exam?
  - Who decides how to deal with issues that come up during the examination?
  - What information/updates are partners entitled to receive?
  - Who speaks for the partners?
  - Who binds the partnership?
- If an adjustment is proposed, who decides how to pay (partnership level, push out, pull in)?



# Updating the Partnership/LLC Agreements: What Steps Should Be Taken Now?

- Designating initial partnership representative
- Providing for succession, termination, replacement of partnership representative
- Minimum required activities of partnership representative
- Requiring push-out, in general?
- Controlling or limiting certain actions by partnership representative?
- Indemnifying partnership representative and/or others in control
- Ensuring cooperation of other tiers
- Disclosures and advice from “trusted advisors”
- Ensuring opt-out, or eligibility, where applicable