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From:

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Subject: RE: Schedule K-1 Information Return for Partner which is a Corporation / Dividend Received Deduction (DRD) Reporting on TEFRA 1065 and Corporate Partner's K-1

Partnership items are limited to items that the partnership is required to determine under Subtitle A of the Code as provided by regulations. The regulations require the amount, allocation and character of income to be determined at the partnership level.

Section 703 and 702(a)(5) make the character of "dividends with respect to which section 1(h)(11) or Part VIII of subchapter B" partnership level determinations. Part VIII of subchapter B includes section 243(b).

Section 1(h)(11) address dividends taxable as capital gain from domestic corporation and qualified foreign corporations. Thus, the partnership must determine the amounts received from such corporations and report them to the partners.

Section 243(b) provides a corporation with a dividends received deduction for any dividends received from a corporation that is a member of the same affiliated group.

Thus, in a TEFRA proceeding, we must determine the amount of dividends and the portion of that dividend income that meets the criteria of section 1(h)(11).

Section 705(a)(5) would also seem to require us to determine the amount of such income that would qualify under section 243(b) for the corporate partner that is allocated such dividend income. Section 702(a)(1) requires this amount to be separately stated.

At least arguably, section 705(a)(5) and 702(a)(1) would not require the partnership to determine whether the corporation distributing the dividend is a member of the same affiliated group as the partner to whom the partnership allocates dividend income. This is the ultimate determination required to determine whether the receiving corporate partner gets a dividends received deduction under section 243(b).

Thus, at the partnership level, we should make all the determinations necessary to determine the taxability of the dividend to the corporate partner including whether the dividend issuing corporation is part of the same affiliated group as the corporate partner receiving the dividend. The dividends received deduction will at least be an affected item (affected by the amount, source, and allocation of the dividend) whose statute is suspended by the TEFRA proceeding. Following the partnership proceeding we should assess all such determinations. The dividends received deduction may be a directly assessable computational affected item at this point if it is clear from the consolidated corporate return that the corporation issuing the dividend and the corporation receiving the dividend are members of the same group

