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From:
Sent: Wednesday, August 12, 2009 9:22:44 AM
To:
Cc:

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

Your suggested approach could work - but not precisely on the grounds you propose.

Section 6222 only applies if the partner has filed inconsistently with the partnership return. In case, where nothing is reported on line 6b, agreement with would conclusively establish an inconsistent filing. In your case it would not. You have an amount reported on line 6b. We just don't know which portion came from domestic affiliated corporations and qualified foreign corporations.

Under Roberts v. Commissioner, 94 T.C 853 at 860, however, you could issue a notice of deficiency disallowing the DRD. In determining the DRD, the court and the parties would by bound by the partnership return "and the partnership books and records." So this would be purely a substantiation issue. Whatever the partnership books and records reflected as to the source of the dividends would be binding on both the government and the taxpayers absent a separate TEFRA proceeding. The source of the dividends shown on the partnership books and records could not be changed in your partner-level deficiency proceeding.

Any such stat notice would have to be issued within the partner's section 6501 period or, if issued under an extension, the extension would have to be on a Form 872-i or equivalent. See Ginsburg v. Commissioner.

Section 6222(b)(1)(A)(i) also supports this approach by providing that a TEFRA proceeding is not necessary if the partner's reporting "is (**or may be**) inconsistent". (emphasis supplied)