Partnership Audit Rules

Before 2018	After 2018
Tax Equity & Fiscal Responsibility Act of 1982 ("TEFRA")	Bipartisan Budget Act of 2015 ("BBA")
• Applies to all Partnerships except certain small & electing large partnerships: a. Partners are U.S. persons, resident alien, "C" corp or estate b. No more than 10 partners • Small partnership TEFRA election available to opt in	• Applies to all Partnerships unless they are eligible to opt out: a. Partners are individuals, estate, Sub "S" or "C" Corp b. Must have a substantial presence in US c. No more than 100 partners d. Follow requirements for election out
• Tax Matter Partner (TMP) must be a general partner or member. • The TMP is the IRS's main contact for audits and litigation. Other partners are, however, allowed to participate in exams and conferences. • TMPs must keep partners informed of tax proceedings. • All partners that meet the definition of a "notice partner" must be notified by the IRS of the proceedings.	• Partnership Representative (PR) must be designated on tax return each year. a. May be someone other than a partner (attorney, CPA, etc.) b. Sole authority to act • Eliminates right of partners to receive notice from IRS and to participate in the audit.
• TEFRA created two audit levels: a partnership-level audit and a partner-level audit. Certain items, known as “partnership items,” were audited in a partnership-level audit. After that audit, the IRS could then make adjustments to the partners’ returns, i.e., the effects of that partnership audit would flow-through to the partners. • The understatement of tax is assessed at the partner level and takes into account a partner’s marginal tax bracket, available losses, credits and other attributes.	• The BBA allows the IRS to both assess and collect taxes at the partnership level. • The imputed underpayment is determined by “netting” all adjustments and multiplying the result by the highest tax rate in effect for the reviewed years • Partnership may elect to pass through adjustments with partners paying on their respective share. This must be done within 45 days of the Final Partnership Adjustment (FPA)
• Only taxpayers who were partners of the audited partnership in the year of **review** are impacted.	• An assessment of additional tax impacts the partnership and its owners who are partners only in the **adjustment** year.