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From:

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To:

Cc:

Subject: RE: Underpayment vs. Understatement

Unfortunately this is not a settled area and won't be until a case goes to court and the court rules on it. I think the best answer in the situation you raise is that once they've agreed to the additional tax on the return (before we issue a SNOD), then that is a kin to filing an amended return reporting the additional income and tax (which is clearly an underpayment situation). Complication can arise depending on the exact facts of the case. This includes: when was innocent spouse raised - if raised before the additional liability was agreed to then [REDACTED] the liability being considered an understatement (although at this point I still think our position should be underpayment). If IS was raised after the additional liability was agreed to then [REDACTED] the liability being an underpayment. Also, while maybe this is obvious, different procedures would be necessary if both spouses are not agreeing to the additional liability. If only one spouse (the nonrequesting spouse) agrees to the liability and the other spouse is seeking relief, we'll need to issue the requesting spouse a SNOD and then the liability clearly is an understatement. If only the requesting spouse agrees to the liability then we'll need to issue a SNOD. In that situation we would be dealing with a deficiency in the NRS's tax court case while treating the RS's liability as an underpayment. [REDACTED]

I hope this was helpful.