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**From:**

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**To:**

**Cc:**

**Subject:** RE: TEFRA Issue

The determination that the LLC partner is not a partner and gets no deductions is a partnership item that is binding on both it and the indirect partners holding an interest through it. See Sente Investment Club (binding on indirect partners) and Katz v. Commissioner, 335 F.3d 1121, 1129 (10th Cir. 2003) (partner identity is a partnership item); Blonien v. Commissioner, (determination of whether listed partner gets any allocation is a partnership item). See also. Treas. Reg.301.6233-1(b)(determination that no partnership exists [i.e., between the disregarded LLC and the other two partners] is made in TEFRA proceeding including the taxable amounts). So if losses are being disallowed, we should be able to simply assess the indirect partners through a directly assessable computational adjustment.

There is other case law that states that, where a person is not listed as a partner and we want to make him a partner, we have to issue a notice of deficiency. See Grigoraci v. Commissioner (characterizing the issue as an affected item that had to await an affected item notice of deficiency issued after the partnership proceeding was over under GAF v. Commissioner) and Hang v. Commissioner (assignment of income from a partnership to a nonpartner is subject to separate deficiency procedures). Those do not seem to be your facts, however.