(d) Definitions

For purposes of this section—

(1) Unrealized receivable

The term ''unrealized receivable'' has the meaning given such term by section 751(c) (determined by treating any reference to the partnership as referring to the partner).

(2) Inventory item

The term ''inventory item'' has the meaning given such term by section 751(d) (determined by treating any reference to the partnership as referring to the partner and by applying section 1231 without regard to any holding period therein provided).

(3) Substituted basis property

(A) In general

If any property described in subsection (a), (b), or (c) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of non-recognition transactions.

(B) Exception for stock in C corporation

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Added Pub. L. 98–369, div. A, title I, § 74(a), July 18, 1984, 98 Stat. 592; amended Pub. L. 104–188, title I, § 1704(t)(63), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–34, title X, § 1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsec. (d)(2). Pub. L. 105–34 substituted ''section 751(d)'' for ''section 751(d)(2)''.

1996—Subsec. (d)(3)(B). Pub. L. 104–188 substituted ''Subparagraph'' for ''Subparagaph''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1062(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 731, 732, 735, and 751 of this title] shall apply to sales, exchanges, and distributions after the date of the enactment of this Act [Aug. 5, 1997].

''(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange.''

EFFECTIVE DATE

Section 74(d)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to property contributed to a partnership after March 31, 1984, in taxable years ending after such date.''

SUBPART B—DISTRIBUTIONS BY A PARTNERSHIP

Sec.
731. Extent of recognition of gain or loss on distribution.
732. Basis of distributed property other than money.
733. Basis of distributee partner's interest.
734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.
735. Character of gain or loss on disposition of distributed property.
736. Payments to a retiring partner or a deceased partner's successor in interest.
737. Recognition of precontribution gain in case of certain distributions to contributing partner.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, § 833(c)(5)(B), Oct. 22, 2004, 118 Stat. 1592, substituted ''Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction'' for ''Optional adjustment to basis of undistributed partnership property'' in item 734.

1992—Pub. L. 102–486, title XIX, § 1937(b)(3), Oct. 24, 1992, 106 Stat. 3033, added item 737.

§ 731. Extent of recognition of gain or loss on distribution

(a) Partners

In the case of a distribution by a partnership to a partner—

(1) gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution, and

(2) loss shall not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in subparagraph (A) or (B) is distributed to such partner, loss shall be recognized to the extent of the excess of the adjusted basis of such partner's interest in the partnership over the sum of—

(A) any money distributed, and

(B) the basis to the distributee, as determined under section 732, of any unrealized receivables (as defined in section 751(c)) and inventory (as defined in section 751(d)).

Any gain or loss recognized under this subsection shall be considered as gain or loss from the sale or exchange of the partnership interest of the distributee partner.

(b) Partnerships

No gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

(c) Treatment of marketable securities

(1) In general

For purposes of subsection (a)(1) and section 737—

(A) the term ''money'' includes marketable securities, and

(B) such securities shall be taken into account at their fair market value as of the date of the distribution.

(2) Marketable securities

For purposes of this subsection:

(A) In general

The term ''marketable securities'' means financial instruments and foreign currencies which are, as of the date of the distribution, actively traded (within the meaning of section 1092(d)(1)).

(B) Other property

Such term includes—

(i) any interest in—

(I) a common trust fund, or

(II) a regulated investment company which is offering for sale or has outstanding any redeemable security (as defined in section 2(a)(32) of the Investment Company Act of 1940) of which it is the issuer,

(ii) any financial instrument which, pursuant to its terms or any other arrangement, is readily convertible into, or exchangeable for, money or marketable securities,

(iii) any financial instrument the value of which is determined substantially by reference to marketable securities,

(iv) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal which, as of the date of the distribution, is actively traded (within the meaning of section 1092(d)(1)) unless such metal was produced, used, or held in the active conduct of a trade or business by the partnership,

(v) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of marketable securities, money, or both, and

(vi) to the extent provided in regulations prescribed by the Secretary, any interest in an entity not described in clause (v) but only to the extent of the value of such interest which is attributable to marketable securities, money, or both.

(C) Financial instrument

The term ''financial instrument'' includes stocks and other equity interests, evidences of indebtedness, options, forward or futures contracts, notional principal contracts, and derivatives.

(3) Exceptions

(A) In general

Paragraph (1) shall not apply to the distribution from a partnership of a marketable security to a partner if—

(i) the security was contributed to the partnership by such partner, except to the extent that the value of the distributed security is attributable to marketable securities or money contributed (directly or indirectly) to the entity to which the distributed security relates,

(ii) to the extent provided in regulations prescribed by the Secretary, the property was not a marketable security when acquired by such partnership, or

(iii) such partnership is an investment partnership and such partner is an eligible partner thereof.

(B) Limitation on gain recognized

In the case of a distribution of marketable securities to a partner, the amount taken into account under paragraph (1) shall be reduced (but not below zero) by the excess (if any) of—

(i) such partner's distributive share of the net gain which would be recognized if all of the marketable securities of the same class and issuer as the distributed securities held by the partnership were sold (immediately before the transaction to which the distribution relates) by the partnership for fair market value, over

(ii) such partner's distributive share of the net gain which is attributable to the marketable securities of the same class and issuer as the distributed securities held by the partnership immediately after the transaction, determined by using the same fair market value as used under clause (i).

Under regulations prescribed by the Secretary, all marketable securities held by the partnership may be treated as marketable securities of the same class and issuer as the distributed securities.

(C) Definitions relating to investment partnerships

For purposes of subparagraph (A)(iii):

(i) Investment partnership

The term ''investment partnership'' means any partnership which has never been engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of—

(I) money,

(II) stock in a corporation,

(III) notes, bonds, debentures, or other evidences of indebtedness,

(IV) interest rate, currency, or equity notional principal contracts,

(V) foreign currencies,

(VI) interests in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any asset described in any other subclause of this clause or in any commodity traded on or subject to the rules of a board of trade or commodity exchange,

(VII) other assets specified in regulations prescribed by the Secretary, or

(VIII) any combination of the foregoing.

(ii) Exception for certain activities

A partnership shall not be treated as engaged in a trade or business by reason of—

(I) any activity undertaken as an investor, trader, or dealer in any asset described in clause (i), or

(II) any other activity specified in regulations prescribed by the Secretary.

(iii) Eligible partner

(I) In general

The term ''eligible partner'' means any partner who, before the date of the distribution, did not contribute to the partnership any property other than assets described in clause (i).

(II) Exception for certain nonrecognition transactions

The term ''eligible partner'' shall not include the transferor or transferee in a nonrecognition transaction involving a

transfer of any portion of an interest in a partnership with respect to which the transferor was not an eligible partner.

(iv) Look-thru of partnership tiers

Except as otherwise provided in regulations prescribed by the Secretary—

(I) a partnership shall be treated as engaged in any trade or business engaged in by, and as holding (instead of a partnership interest) a proportionate share of the assets of, any other partnership in which the partnership holds a partnership interest, and

(II) a partner who contributes to a partnership an interest in another partnership shall be treated as contributing a proportionate share of the assets of the other partnership.

If the preceding sentence does not apply under such regulations with respect to any interest held by a partnership in another partnership, the interest in such other partnership shall be treated as if it were specified in a subclause of clause (i).

(4) Basis of securities distributed

(A) In general

The basis of marketable securities with respect to which gain is recognized by reason of this subsection shall be—

(i) their basis determined under section 732, increased by

(ii) the amount of such gain.

(B) Allocation of basis increase

Any increase in basis attributable to the gain described in subparagraph (A)(ii) shall be allocated to marketable securities in proportion to their respective amounts of unrealized appreciation before such increase.

(5) Subsection disregarded in determining basis of partner's interest in partnership and of basis of partnership property

Sections 733 and 734 shall be applied as if no gain were recognized, and no adjustment were made to the basis of property, under this subsection.

(6) Character of gain recognized

In the case of a distribution of a marketable security which is an unrealized receivable (as defined in section 751(c)) or an inventory item (as defined in section 751(d)), any gain recognized under this subsection shall be treated as ordinary income to the extent of any increase in the basis of such security attributable to the gain described in paragraph (4)(A)(ii).

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations to prevent the avoidance of such purposes.

(d) Exceptions

This section shall not apply to the extent otherwise provided by section 736 (relating to payments to a retiring partner or a deceased partner's successor in interest), section 751 (relating to unrealized receivables and inventory items), and section 737 (relating to recognition of precontribution gain in case of certain distributions).

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 102–486, title XIX, § 1937(b)(2), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 103–465, title VII, § 741(a), Dec. 8, 1994, 108 Stat. 5006; Pub. L. 105–34, title X, § 1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

REFERENCES IN TEXT

Section 2(a)(32) of the Investment Company Act of 1940, referred to in subsec. (c)(2)(B)(i)(II), is classified to section 80a–2(a)(32) of Title 15, Commerce and Trade.

AMENDMENTS

1997—Subsecs. (a)(2)(B), (c)(6). Pub. L. 105–34 substituted ''section 751(d)'' for ''section 751(d)(2)''.

1994—Subsecs. (c), (d). Pub. L. 103–465 added subsec. (c) and redesignated former subsec. (c) as (d).

1992—Subsec. (c). Pub. L. 102–486 substituted '', section 751'' for ''and section 751'' and inserted before period at end '', and section 737 (relating to recognition of precontribution gain in case of certain distributions)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105–34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 741(c) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 737 of this title] shall apply to distributions after the date of the enactment of this Act [Dec. 8, 1994].

''(2) CERTAIN DISTRIBUTIONS BEFORE JANUARY 1, 1995.—The amendments made by this section shall not apply to any marketable security distributed before January 1, 1995, by the partnership which held such security on July 27, 1994.

''(3) DISTRIBUTIONS IN LIQUIDATION OF PARTNER'S INTEREST.—The amendments made by this section shall not apply to the distribution of a marketable security in liquidation of a partner's interest in a partnership if—

''(A) such liquidation is pursuant to a written contract which was binding on July 15, 1994, and at all times thereafter before the distribution, and

''(B) such contract provides for the purchase of such interest not later than a date certain for—

''(i) a fixed value of marketable securities that are specified in the contract, or

''(ii) other property.

The preceding sentence shall not apply if the partner has the right to elect that such distribution be made other than in marketable securities.

''(4) DISTRIBUTIONS IN COMPLETE LIQUIDATION OF PUBLICLY TRADED PARTNERSHIPS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to the distribution of a marketable security in a qualified partnership liquidation if—

''(i) the marketable securities were received by the partnership in a nonrecognition transaction in exchange for substantially all of the assets of the partnership,

''(ii) the marketable securities are distributed by the partnership within 90 days after their receipt by the partnership, and

''(iii) the partnership is liquidated before the beginning of the 1st taxable year of the partnership beginning after December 31, 1997.

''(B) QUALIFIED PARTNERSHIP LIQUIDATION.—For purposes of subparagraph (A), the term 'qualified partnership liquidation' means—

''(i) a complete liquidation of a publicly traded partnership (as defined in section 7704(b) of the Internal Revenue Code of 1986) which is an existing partnership (as defined in section 10211(c)(2) of the Revenue Act of 1987 [Pub. L. 100–203, set out as an Effective Date note under section 7704 of this title]), and

''(ii) a complete liquidation of a partnership which is related to a partnership described in clause (i) if such liquidation is related to a complete liquidation of the partnership described in clause (i).

''(5) MARKETABLE SECURITIES.—For purposes of this subsection, the term 'marketable securities' has the meaning given such term by section 731(c) of the Internal Revenue Code of 1986, as added by this section.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102–486, set out as a note under section 704 of this title.

§ 732. Basis of distributed property other than money

(a) Distributions other than in liquidation of a partner's interest

(1) General rule

The basis of property (other than money) distributed by a partnership to a partner other than in liquidation of the partner's interest shall, except as provided in paragraph (2), be its adjusted basis to the partnership immediately before such distribution.

(2) Limitation

The basis to the distributee partner of property to which paragraph (1) is applicable shall not exceed the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(b) Distributions in liquidation

The basis of property (other than money) distributed by a partnership to a partner in liquidation of the partner's interest shall be an amount equal to the adjusted basis of such partner's interest in the partnership reduced by any money distributed in the same transaction.

(c) Allocation of basis

(1) In general

The basis of distributed properties to which subsection (a)(2) or (b) is applicable shall be allocated—

(A)(i) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)) in an amount equal to the adjusted basis of each such property to the partnership, and

(ii) if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, then, to the extent any decrease is required in order to have the adjusted bases of such properties equal the basis to be allocated, in the manner provided in paragraph (3), and

(B) to the extent of any basis remaining after the allocation under subparagraph (A), to other distributed properties—

(i) first by assigning to each such other property such other property's adjusted basis to the partnership, and

(ii) then, to the extent any increase or decrease in basis is required in order to have the adjusted bases of such other distributed properties equal such remaining basis, in the manner provided in paragraph (2) or (3), whichever is appropriate.

(2) Method of allocating increase

Any increase required under paragraph (1)(B) shall be allocated among the properties—

(A) first to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation before such increase (but only to the extent of each property's unrealized appreciation), and

(B) then, to the extent such increase is not allocated under subparagraph (A), in proportion to their respective fair market values.

(3) Method of allocating decrease

Any decrease required under paragraph (1)(A) or (1)(B) shall be allocated—

(A) first to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation before such decrease (but only to the extent of each property's unrealized depreciation), and

(B) then, to the extent such decrease is not allocated under subparagraph (A), in proportion to their respective adjusted bases (as adjusted under subparagraph (A)).

(d) Special partnership basis to transferee

For purposes of subsections (a), (b), and (c), a partner who acquired all or a part of his interest by a transfer with respect to which the election provided in section 754 is not in effect, and to whom a distribution of property (other than money) is made with respect to the transferred interest within 2 years after such transfer, may elect, under regulations prescribed by the Secretary, to treat as the adjusted partnership basis of such property the adjusted basis such property would have if the adjustment provided in section 743(b) were in effect with respect to the partnership property. The Secretary may by regulations require the application of this subsection in the case of a distribution to a transferee partner, whether or not made within 2 years after the transfer, if at the time of the transfer the fair market value of the partnership property (other than money) exceeded 110 percent of its adjusted basis to the partnership.

(e) Exception

This section shall not apply to the extent that a distribution is treated as a sale or exchange of property under section 751(b) (relating to unrealized receivables and inventory items).

(f) Corresponding adjustment to basis of assets of a distributed corporation controlled by a corporate partner

(1) In general

If—

(A) a corporation (hereafter in this subsection referred to as the ''corporate partner'') receives a distribution from a partnership of stock in another corporation (hereafter in this subsection referred to as the ''distributed corporation''),

(B) the corporate partner has control of the distributed corporation immediately