

**(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.

Sec.	
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 subclass 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

after the distribution or at any time thereafter, and

(C) the partnership's adjusted basis in such stock immediately before the distribution exceeded the corporate partner's adjusted basis in such stock immediately after the distribution,

then an amount equal to such excess shall be applied to reduce (in accordance with subsection (c)) the basis of property held by the distributed corporation at such time (or, if the corporate partner does not control the distributed corporation at such time, at the time the corporate partner first has such control).

**(2) Exception for certain distributions before control acquired**

Paragraph (1) shall not apply to any distribution of stock in the distributed corporation if—

(A) the corporate partner does not have control of such corporation immediately after such distribution, and

(B) the corporate partner establishes to the satisfaction of the Secretary that such distribution was not part of a plan or arrangement to acquire control of the distributed corporation.

**(3) Limitations on basis reduction**

**(A) In general**

The amount of the reduction under paragraph (1) shall not exceed the amount by which the sum of the aggregate adjusted bases of the property and the amount of money of the distributed corporation exceeds the corporate partner's adjusted basis in the stock of the distributed corporation.

**(B) Reduction not to exceed adjusted basis of property**

No reduction under paragraph (1) in the basis of any property shall exceed the adjusted basis of such property (determined without regard to such reduction).

**(4) Gain recognition where reduction limited**

If the amount of any reduction under paragraph (1) (determined after the application of paragraph (3)(A)) exceeds the aggregate adjusted bases of the property of the distributed corporation—

(A) such excess shall be recognized by the corporate partner as long-term capital gain, and

(B) the corporate partner's adjusted basis in the stock of the distributed corporation shall be increased by such excess.

**(5) Control**

For purposes of this subsection, the term "control" means ownership of stock meeting the requirements of section 1504(a)(2).

**(6) Indirect distributions**

For purposes of paragraph (1), if a corporation acquires (other than in a distribution from a partnership) stock the basis of which is determined (by reason of being distributed from a partnership) in whole or in part by reference to subsection (a)(2) or (b), the corporation shall be treated as receiving a distribution of such stock from a partnership.

**(7) Special rule for stock in controlled corporation**

If the property held by a distributed corporation is stock in a corporation which the distributed corporation controls, this subsection shall be applied to reduce the basis of the property of such controlled corporation. This subsection shall be reapplied to any property of any controlled corporation which is stock in a corporation which it controls.

**(8) Regulations**

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to avoid double counting and to prevent the abuse of such purposes.

(Aug. 16, 1954, ch. 736, 68A Stat. 246; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title X, §§1061(a), 1062(b)(3), Aug. 5, 1997, 111 Stat. 945, 947; Pub. L. 106-170, title V, §538(a), Dec. 17, 1999, 113 Stat. 1939.)

AMENDMENTS

1999—Subsec. (f). Pub. L. 106-170 added subsec. (f).

1997—Subsec. (c). Pub. L. 105-34, §1061(a), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "The basis of distributed properties to which subsection (a)(2) or subsection (b) is applicable shall be allocated—

"(1) first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership (or if the basis to be allocated is less than the sum of the adjusted bases of such properties to the partnership, in proportion to such bases), and

"(2) to the extent of any remaining basis, to any other distributed properties in proportion to their adjusted bases to the partnership."

Subsec. (c)(1)(A)(i). Pub. L. 105-34, §1062(b)(3), substituted "section 751(d)" for "section 751(d)(2)".

1976—Subsec. (d). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title V, §538(b), Dec. 17, 1999, 113 Stat. 1940, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to distributions made after July 14, 1999.

"(2) PARTNERSHIPS IN EXISTENCE ON JULY 14, 1999.—In the case of a corporation which is a partner in a partnership as of July 14, 1999, the amendment made by this section shall apply to any distribution made (or treated as made) to such partner from such partnership after June 30, 2001, except that this paragraph shall not apply to any distribution after the date of the enactment of this Act [Dec. 17, 1999] unless the partner makes an election to have this paragraph apply to such distribution on the partner's return of Federal income tax for the taxable year in which such distribution occurs."

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1061(b) of Pub. L. 105-34 provided that: "The amendment made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1062(b)(3) of 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.

**§ 733. Basis of distributee partner's interest**

In the case of a distribution by a partnership to a partner other than in liquidation of a partner's interest, the adjusted basis to such partner of his interest in the partnership shall be reduced (but not below zero) by—

- (1) the amount of any money distributed to such partner, and
- (2) the amount of the basis to such partner of distributed property other than money, as determined under section 732.

(Aug. 16, 1954, ch. 736, 68A Stat. 247.)

**§ 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction****(a) General rule**

The basis of partnership property shall not be adjusted as the result of a distribution of property to a partner unless the election, provided in section 754 (relating to optional adjustment to basis of partnership property), is in effect with respect to such partnership or unless there is a substantial basis reduction with respect to such distribution.

**(b) Method of adjustment**

In the case of a distribution of property to a partner by a partnership with respect to which the election provided in section 754 is in effect or with respect to which there is a substantial basis reduction, the partnership shall—

- (1) increase the adjusted basis of partnership property by—

(A) the amount of any gain recognized to the distributee partner with respect to such distribution under section 731(a)(1), and

(B) in the case of distributed property to which section 732(a)(2) or (b) applies, the excess of the adjusted basis of the distributed property to the partnership immediately before the distribution (as adjusted by section 732(d)) over the basis of the distributed property to the distributee, as determined under section 732, or

- (2) decrease the adjusted basis of partnership property by—

(A) the amount of any loss recognized to the distributee partner with respect to such distribution under section 731(a)(2), and

(B) in the case of distributed property to which section 732(b) applies, the excess of the basis of the distributed property to the distributee, as determined under section 732, over the adjusted basis of the distributed property to the partnership immediately before such distribution (as adjusted by section 732(d)).

Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.

**(c) Allocation of basis**

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

**(d) Substantial basis reduction****(1) In general**

For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds \$250,000.

**(2) Regulations**

**For regulations to carry out this subsection, see section 743(d)(2).**

**(e) Exception for securitization partnerships**

For purposes of this section, a securitization partnership (as defined in section 743(f)) shall not be treated as having a substantial basis reduction with respect to any distribution of property to a partner.

(Aug. 16, 1954, ch. 736, 68A Stat. 247; Pub. L. 98-369, div. A, title I, §78(a), July 18, 1984, 98 Stat. 597; Pub. L. 108-357, title VIII, §833(c)(1)–(5)(A), Oct. 22, 2004, 118 Stat. 1591, 1592; Pub. L. 109-135, title IV, §403(bb), Dec. 21, 2005, 119 Stat. 2630.)

## AMENDMENTS

2005—Subsec. (a). Pub. L. 109-135, §403(bb)(1), inserted “with respect to such distribution” before period at end.

Subsec. (b). Pub. L. 109-135, §403(bb)(2), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “In the case of a distribution of property to a partner, a partnership, with respect to which the election provided in section 754 is in effect or unless there is a substantial basis reduction, shall—”.

2004—Pub. L. 108-357, §833(c)(5)(A), 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 section catchline.

Subsec. (a). Pub. L. 108-357, §833(c)(1), inserted “or unless there is a substantial basis reduction” before period at end.

Subsec. (b). Pub. L. 108-357, §833(c)(2), inserted “or unless there is a substantial basis reduction” after “section 754 is in effect” in introductory provisions.

Subsec. (d). Pub. L. 108-357, §833(c)(3), added subsec. (d).

Subsec. (e). Pub. L. 108-357, §833(c)(4), added subsec. (e).

1984—Subsec. (b). Pub. L. 98-369 inserted at end “Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.”

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

## EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §833(d)(3), Oct. 22, 2004, 118 Stat. 1592, provided that: “The amendments made by subsection (c) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].”

## EFFECTIVE DATE OF 1984 AMENDMENT

Section 78(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this sec-

tion] shall apply to distributions after March 1, 1984, in taxable years ending after such date.”

**§ 735. Character of gain or loss on disposition of distributed property**

**(a) Sale or exchange of certain distributed property**

**(1) Unrealized receivables**

Gain or loss on the disposition by a distributee partner of unrealized receivables (as defined in section 751(c)) distributed by a partnership, shall be considered as ordinary income or as ordinary loss, as the case may be.

**(2) Inventory items**

Gain or loss on the sale or exchange by a distributee partner of inventory items (as defined in section 751(d)) distributed by a partnership shall, if sold or exchanged within 5 years from the date of the distribution, be considered as ordinary income or as ordinary loss, as the case may be.

**(b) Holding period for distributed property**

In determining the period for which a partner has held property received in a distribution from a partnership (other than for purposes of subsection (a)(2)), there shall be included the holding period of the partnership, as determined under section 1223, with respect to such property.

**(c) Special rules**

**(1) Waiver of holding periods contained in section 1231**

For purposes of this section, section 751(d) (defining inventory item) shall be applied without regard to any holding period in section 1231(b).

**(2) Substituted basis property**

**(A) In general**

If any property described in subsection (a) 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 nonrecognition 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.

(Aug. 16, 1954, ch. 763, 68A Stat. 247; Pub. L. 94-455, title XIX, §1901(b)(3)(D), Oct. 4, 1976, 90 Stat. 1792; Pub. L. 98-369, div. A, title I, §74(b), July 18, 1984, 98 Stat. 593; Pub. L. 105-34, title X, §1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsecs. (a)(2), (c)(1). Pub. L. 105-34 substituted “section 751(d)” for “section 751(d)(2)”.

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

1976—Subsec. (a)(1), (2). Pub. L. 94-455 substituted “as ordinary income or as ordinary loss, as the case may be” for “gain or loss from the sale or exchange of property other than a capital asset”.

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 1984 AMENDMENT

Section 74(d)(2) of Pub. L. 98-369 provided that: “The amendment made by subsection (b) [amending this section] shall apply to property distributed after March 31, 1984, in taxable years ending after such date.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

**§ 736. Payments to a retiring partner or a deceased partner's successor in interest**

**(a) Payments considered as distributive share or guaranteed payment**

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, except as provided in subsection (b), be considered—

(1) as a distributive share to the recipient of partnership income if the amount thereof is determined with regard to the income of the partnership, or

(2) as a guaranteed payment described in section 707(c) if the amount thereof is determined without regard to the income of the partnership.

**(b) Payments for interest in partnership**

**(1) General rule**

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, to the extent such payments (other than payments described in paragraph (2)) are determined, under regulations prescribed by the Secretary, to be made in exchange for the interest of such partner in partnership property, be considered as a distribution by the partnership and not as a distributive share or guaranteed payment under subsection (a).

**(2) Special rules**

For purposes of this subsection, payments in exchange for an interest in partnership property shall not include amounts paid for—

(A) unrealized receivables of the partnership (as defined in section 751(c)), or

(B) good will of the partnership, except to the extent that the partnership agreement provides for a payment with respect to good will.

**(3) Limitation on application of paragraph (2)**

Paragraph (2) shall apply only if—

(A) capital is not a material income-producing factor for the partnership, and

(B) the retiring or deceased partner was a general partner in the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title VII, §701(u)(13)(B), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 103-66, title XIII, §13262(a), (b)(2)(B), Aug. 10, 1993, 107 Stat. 541.)

AMENDMENTS

1993—Subsec. (b)(3). Pub. L. 103-66, §13262(a), added par. (3).

Subsec. (c). Pub. L. 103-66, §13262(b)(2)(B), struck out heading and text of subsec. (c). Text read as follows: "For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e)."

1978—Subsec. (c). Pub. L. 95-600 added subsec. (c).

1976—Subsec. (b)(1). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 13262(c) of Pub. L. 103-66 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 751 of this title] shall apply in the case of partners retiring or dying on or after January 5, 1993.

"(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any partner retiring on or after January 5, 1993, if a written contract to purchase such partner's interest in the partnership was binding on January 4, 1993, and at all times thereafter before such purchase."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges, and distributions taking place after Oct. 9, 1975, see section 701(u)(13)(C) of Pub. L. 95-600, set out as a note under section 751 of this title.

### § 737. Recognition of precontribution gain in case of certain distributions to contributing partner

#### (a) General rule

In the case of any distribution by a partnership to a partner, such partner shall be treated as recognizing gain in an amount equal to the lesser of—

(1) the excess (if any) of (A) the fair market value of property (other than money) received in the distribution over (B) the adjusted basis of such partner's interest in the partnership immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the net precontribution gain of the partner.

Gain recognized under the preceding sentence shall be in addition to any gain recognized under section 731. The character of such gain shall be determined by reference to the proportionate character of the net precontribution gain.

#### (b) Net precontribution gain

For purposes of this section, the term "net precontribution gain" means the net gain (if any) which would have been recognized by the distributee partner under section 704(c)(1)(B) if all property which—

(1) had been contributed to the partnership by the distributee partner within 7 years of the distribution, and

(2) is held by such partnership immediately before the distribution,

had been distributed by such partnership to another partner.

#### (c) Basis rules

##### (1) Partner's interest

The adjusted basis of a partner's interest in a partnership shall be increased by the amount of any gain recognized by such partner under subsection (a). For purposes of determining the basis of the distributed property (other

than money), such increase shall be treated as occurring immediately before the distribution.

##### (2) Partnership's basis in contributed property

Appropriate adjustments shall be made to the adjusted basis of the partnership in the contributed property referred to in subsection (b) to reflect gain recognized under subsection (a).

#### (d) Exceptions

##### (1) Distributions of previously contributed property

If any portion of the property distributed consists of property which had been contributed by the distributee partner to the partnership, such property shall not be taken into account under subsection (a)(1) and shall not be taken into account in determining the amount of the net precontribution gain. If the property distributed consists of an interest in an entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to property contributed to such entity after such interest had been contributed to the partnership.

##### (2) Coordination with section 751

This section shall not apply to the extent section 751(b) applies to such distribution.

#### (e) Marketable securities treated as money

**For treatment of marketable securities as money for purposes of this section, see section 731(c).**

(Added Pub. L. 102-486, title XIX, §1937(a), Oct. 24, 1992, 106 Stat. 3032; amended Pub. L. 103-465, title VII, §741(b), Dec. 8, 1994, 108 Stat. 5009; Pub. L. 104-188, title I, §1704(j)(8), Aug. 20, 1996, 110 Stat. 1882; Pub. L. 105-34, title X, §1063(a), Aug. 5, 1997, 111 Stat. 947.)

#### AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105-34 substituted "7 years" for "5 years".

1996—Pub. L. 104-188 provided that section 1937(a) of Pub. L. 102-486, shall be applied as if "Subpart B" appeared instead of "Subpart C". Section 1937(a) of Pub. L. 102-486 directed amendment of subpart C of this part by adding this section at the end thereof.

1994—Subsec. (c)(1). Pub. L. 103-465, §741(b)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: "Except for purposes of determining the amount recognized under subsection (a), such increase shall be treated as occurring immediately before the distribution."

Subsec. (e). Pub. L. 103-465, §741(b)(2), added subsec. (e).

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to property contributed to a partnership after June 8, 1997, but not applicable to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property, see section 1063(b) of Pub. L. 105-34, set out as a note under section 704 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 applicable to distributions after Dec. 8, 1994, and not applicable to certain distributions before Jan. 1, 1995, distributions in liquidation of partner's interest, or distributions in complete liquidation of publicly traded partnerships, see section 741(c) of Pub. L. 103-465, set out as a note under section 731 of this title.

## EFFECTIVE DATE

Section applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102-486, set out as an Effective Date of 1992 Amendment note under section 704 of this title.

## SUBPART C—TRANSFERS OF INTERESTS IN A PARTNERSHIP

Sec.	
741.	Recognition and character of gain or loss on sale or exchange.
742.	Basis of transferee partner's interest.
743.	Special rules where section 754 election or substantial built-in loss.

## AMENDMENTS

2004—Pub. L. 108-357, title VIII, §833(b)(6)(B), Oct. 22, 2004, 118 Stat. 1591, substituted “Special rules where section 754 election or substantial built-in loss” for “Optional adjustment to basis of partnership property” in item 743.

**§ 741. Recognition and character of gain or loss on sale or exchange**

In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in section 751 (relating to unrealized receivables and inventory items).

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 107-147, title IV, §417(12), Mar. 9, 2002, 116 Stat. 56.)

## AMENDMENTS

2002—Pub. L. 107-147 struck out “which have appreciated substantially in value” after “inventory items”.

**§ 742. Basis of transferee partner's interest**

The basis of an interest in a partnership acquired other than by contribution shall be determined under part II of subchapter O (sec. 1011 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 249.)

**§ 743. Special rules where section 754 election or substantial built-in loss****(a) General rule**

The basis of partnership property shall not be adjusted as the result of a transfer of an interest in a partnership by sale or exchange or on the death of a partner unless the election provided by section 754 (relating to optional adjustment to basis of partnership property) is in effect with respect to such partnership or unless the partnership has a substantial built-in loss immediately after such transfer.

**(b) Adjustment to basis of partnership property**

In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in section 754 is in effect or which has a substantial built-in loss immediately after such transfer shall—

(1) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or

(2) decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership.

Under regulations prescribed by the Secretary, such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. In the case of an adjustment under this subsection to the basis of partnership property subject to depletion, any depletion allowable shall be determined separately for the transferee partner with respect to his interest in such property.

**(c) Allocation of basis**

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

**(d) Substantial built-in loss****(1) In general**

For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than \$250,000 the fair market value of such property.

**(2) Regulations**

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.

**(e) Alternative rules for electing investment partnerships****(1) No adjustment of partnership basis**

For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

**(2) Loss deferral for transferee partner**

In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

**(3) No reduction in partnership basis**

Losses disallowed under paragraph (2) shall not decrease the transferee partner's basis in the partnership interest.