ments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [Jan. 23, 2002] by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.''

Amendment by section 113(b) of Pub. L. 107–134 applicable to taxable years ending on or after Sept. 11, 2001, see section 113(c) of Pub. L. 107–134, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1982, see section 1708(b) of Pub. L. 99–514, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 722(g)(5) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section and enacting and amending provisions set out below] shall take effect as if they were included in the amendments made by section 1 of Public Law 98–259 [amending this section and enacting provisions set out below].

''(B) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendments made by this subsection shall not expire before the date 1 year after the date of the enactment of this Act [July 18, 1984].''

Section 1(b) of Pub. L. 98–259 as amended by Pub. L. 98–369, div. A, title VII, § 722(g)(1), July 18, 1984, 98 Stat. 974; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to all taxable years (whether beginning before, on, or after the date of enactment of this Act [Apr. 10, 1984]) of individuals dying after November 17, 1978, as a result of wounds or injuries incurred after such date.

''(2) STATUTE OF LIMITATIONS WAIVED.—Notwithstanding section 6511 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) shall not expire before the date 1 year after the date of the enactment of this Act.''

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.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4(b) of Pub. L. 93–597 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years ending on or after February 28, 1961.''

REFUNDS AND CREDITS OF OVERPAYMENTS FOR TAXABLE YEARS ENDING ON OR AFTER FEBRUARY 28, 1961, RESULTING FROM APPLICATION OF PROVISIONS

Section 4(c) of Pub. L. 93–597, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If the refund or credit of any overpayment for any taxable year ending on or after February 28, 1961, resulting from the application of section 692 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a) of this section) is prevented at any time before the expiration of one year after the date of the enactment of this Act [Jan. 2, 1975] by the operation of any law or rule of law, but would not have been so prevented if claim for refund or credit therefor were made on the due date for the return for the taxable year of his death (or any later year), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the expiration of such one-year period.''

TREATMENT OF DIRECTOR GENERAL OF MULTINATIONAL FORCE IN SINAI

Section 722(g)(4) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 692(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the Director General of the Multinational Force and Observers in the Sinai who died on February 15, 1984, shall be treated as if he were a civilian employee of the United States while he served as such Director General.''

Subchapter K—Partners and Partnerships

Part
I. Determination of tax liability.
II. Contributions, distributions, and transfers.
III. Definitions.
IV. Special rules for electing large partnerships.

AMENDMENTS

1997—Pub. L. 105–34, title XII, § 1221(b), Aug. 5, 1997, 111 Stat. 1008, added item for part IV.

PART I—DETERMINATION OF TAX LIABILITY

Sec.
701. Partners, not partnership, subject to tax.
702. Income and credits of partner.
703. Partnership computations.
704. Partner's distributive share.
705. Determination of basis of partner's interest.
706. Taxable years of partner and partnership.
707. Transactions between partner and partnership.
708. Continuation of partnership.
709. Treatment of organization and syndication fees.

AMENDMENTS

1976—Pub. L. 94–455, title II, § 213(b)(2), title XIX, § 1901(b)(23), Oct. 4, 1976, 90 Stat. 1547, 1798, struck out part IV ''Effective date for subchapter'' in table of parts of subchapter K of chapter 1 and added item 709.

§ 701. Partners, not partnership, subject to tax

A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only in their separate or individual capacities.

(Aug. 16, 1954, ch. 736, 68A Stat. 239.)

§ 702. Income and credits of partner

(a) General rule

In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 1 year,

(2) gains and losses from sales or exchanges of capital assets held for more than 1 year,

(3) gains and losses from sales or exchanges of property described in section 1231 (relating to certain property used in a trade or business and involuntary conversions),

(4) charitable contributions (as defined in section 170(c)),

(5) dividends with respect to which section 1(h)(11) or part VIII of subchapter B applies,

(6) taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(7) other items of income, gain, loss, deduction, or credit, to the extent provided by regulations prescribed by the Secretary, and

(8) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

(b) Character of items constituting distributive share

The character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share under paragraphs (1) through (7) of subsection (a) shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(c) Gross income of a partner

In any case where it is necessary to determine the gross income of a partner for purposes of this title, such amount shall include his distributive share of the gross income of the partnership.

(d) Cross reference

For rules relating to procedures for determining the tax treatment of partnership items see subchapter C of chapter 63 (section 6221 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 239; Pub. L. 88–272, title II, § 201(d)(7), Feb. 26, 1964, 78 Stat. 32; Pub. L. 94–455, title XIV, § 1402(b)(1)(L), (2), title XIX, §§ 1901(b)(1)(I)(i), (ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1791, 1834; Pub. L. 96–223, title IV, § 404(b)(5), Apr. 2, 1980, 94 Stat. 307; Pub. L. 97–34, title III, § 301(b)(5), (6)(C), Aug. 13, 1981, 95 Stat. 270; Pub. L. 97–248, title IV, § 402(c)(1), Sept. 3, 1982, 96 Stat. 667; Pub. L. 97–448, title I, § 103(a)(4), Jan. 12, 1983, 96 Stat. 2375; Pub. L. 98–369, div. A, title X, § 1001(b)(9), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title VI, § 612(b)(5), Oct. 22, 1986, 100 Stat. 2250; Pub. L. 108–27, title III, § 302(e)(8), May 28, 2003, 117 Stat. 764.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

AMENDMENTS

2003—Subsec. (a)(5). Pub. L. 108–27, §§ 302(e)(8), 303, temporarily amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''dividends with respect to which there is a deduction under part VIII of subchapter B,''. See Effective and Termination Dates of 2003 Amendment note below.

1986—Subsec. (a)(5). Pub. L. 99–514 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''dividends or interest with respect to which there is an exclusion under section 116 or 128, or a deduction under part VIII of subchapter B,''.

1984—Subsec. (a)(1), (2). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1983—Subsec. (a)(5). Pub. L. 97–448 substituted ''an exclusion under section 116 or 128,'' for ''provided an exclusion under section 116 or 128''.

1982—Subsec. (d). Pub. L. 97–248 added subsec. (d).

1981—Subsec. (a)(5). Pub. L. 97–34, § 301(b)(6)(C), inserted reference to ''interest'' in heading and text which continued the amendment made by Pub. L. 96–223.

Pub. L. 97–34, § 301(b)(5), inserted ''or 128'' after ''section 116''.

1980—Subsec. (a)(5). Pub. L. 96–223 inserted ''or interest'' after ''dividends''.

1976—Subsec. (a)(1), (2). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, § 1402(b)(1)(L), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (a)(7) to (9). Pub. L. 94–455, §§ 1901(b)(1)(I)(i), 1906(b)(13)(A), redesignated pars. (8) and (9) as (7) and (8), respectively, and in par. (7), as so redesignated, struck out ''or his delegate'' after ''Secretary''. Former par. (7), which related partially tax-exempt interest on obligations of the United States or its instrumentalities, was struck out.

Subsec. (b). Pub. L. 94–455, § 1901(b)(1)(I)(ii), substituted ''paragraphs (1) through (7)'' for ''paragraphs (1) through (8)''.

1964—Subsec. (a)(5). Pub. L. 88–272 struck out ''a credit under section 34,'' before ''an exclusion''.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108–27, set out as a note under section 1 of this title.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, as amended, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 612(c) of Pub. L. 99–514, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 301(b)(5) of Pub. L. 97–34 applicable to taxable years ending after Sept. 30, 1981, and amendment by section 301(b)(6)(C) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 301(d) of Pub. L. 97–34, set out as a note under section 265 of this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96–223 applicable with respect to taxable years beginning after Dec. 31, 1980, and be-

fore Jan. 1, 1982, see section 404(c) of Pub. L. 96–223, set out as a note under section 265 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(1)(I)(i), (ii) of 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.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

§ 703. Partnership computations

(a) Income and deductions

The taxable income of a partnership shall be computed in the same manner as in the case of an individual except that—

(1) the items described in section 702(a) shall be separately stated, and

(2) the following deductions shall not be allowed to the partnership:

(A) the deductions for personal exemptions provided in section 151,

(B) the deduction for taxes provided in section 164(a) with respect to taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(C) the deduction for charitable contributions provided in section 170,

(D) the net operating loss deduction provided in section 172,

(E) the additional itemized deductions for individuals provided in part VII of subchapter B (sec. 211 and following), and

(F) the deduction for depletion under section 611 with respect to oil and gas wells.

(b) Elections of the partnership

Any election affecting the computation of taxable income derived from a partnership shall be made by the partnership, except that any election under—

(1) subsection (b)(5) or (c)(3) of section 108 (relating to income from discharge of indebtedness),

(2) section 617 (relating to deduction and recapture of certain mining exploration expenditures), or

(3) section 901 (relating to taxes of foreign countries and possessions of the United States),

shall be made by each partner separately.

(Aug. 16, 1954, ch. 736, 68A Stat. 240; Pub. L. 89–570, § 2(b), Sept. 12, 1966, 80 Stat. 764; Pub. L. 91–172, title V, § 504(c)(3), Dec. 30, 1969, 83 Stat. 633; Pub. L. 92–178, title III, § 304(c), Dec. 10, 1971, 85 Stat. 523; Pub. L. 94–12, title V, § 501(b)(3), Mar. 29, 1975, 89 Stat. 53; Pub. L. 94–455, title XIX, § 1901(b)(21)(F), title XXI, § 2115(c)(2), Oct. 4, 1976, 90 Stat. 1798, 1909; Pub. L. 95–30, title I, § 101(d)(10), May 23, 1977, 91 Stat. 134; Pub. L. 96–589, § 2(e)(1), Dec. 24, 1980, 94 Stat. 3396; Pub. L. 99–514, title V, § 511(d)(2)(B), title VII, § 701(e)(4)(E), Oct. 22, 1986, 100 Stat. 2249, 2343; Pub. L. 100–647, title I, § 1008(i), Nov. 10, 1988, 102 Stat. 3445; Pub. L. 103–66, title XIII, § 13150(c)(9), Aug. 10, 1993, 107 Stat. 448.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66 substituted ''subsection (b)(5) or (c)(3)'' for ''subsection (b)(5)''.

1988—Subsec. (b)(1). Pub. L. 100–647 substituted ''subsection (b)(5)'' for ''subsection (b)(5) or (d)(4)''.

1986—Subsec. (b). Pub. L. 99–514 struck out former pars. (1) and (3) which related to elections under sections 57(c) and 163(d), respectively, and redesignated former pars. (2), (4), and (5), as pars. (1), (2), and (3), respectively.

1980—Subsec. (b). Pub. L. 96–589 inserted reference to section 108(b)(5) and (d)(4).

1977—Subsec. (a)(2). Pub. L. 95–30 struck out subpar. (A) which made reference to the standard deduction provided in section 141, and redesignated subpars. (B) to (G) as (A) to (F), respectively.

1976—Subsec. (a)(2)(G). Pub. L. 94–455, § 2115(c)(2), substituted ''wells'' for ''production subject to the provisions of section 613A(c)''.

Subsec. (b). Pub. L. 94–455, § 1901(b)(21)(F), struck out ''under section 615 (relating to pre-1970 exploration expenditures),'' after ''of the United States, and any election''.

1975—Subsec. (a)(2)(G). Pub. L. 94–12 added subpar. (G).

1971—Subsec. (b). Pub. L. 92–178 substituted '','' for ''or'' after ''(relating to pre-1970 exploration expenditures)'' and inserted ''under section 57(c) (relating to definition of net lease), or under section 163(d) (relating to limitation on interest on investment indebtedness)'' after ''(relating to deduction and recapture of certain mining exploration expenditures)''.

1969—Subsec. (b). Pub. L. 91–172 substituted ''(relating to pre-1970 exploration expenditures) or under section 617 (relating to deduction and recapture of certain mining exploration expenditures)'' for ''(relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining)''.

1966—Subsec. (b). Pub. L. 89–570 provided for election under section 615 (relating to exploration expenditures) or under section 617 (relating to additional exploration expenditures in the case of domestic mining).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to discharges after Dec. 31, 1992, in taxable years ending after such date, see section 13150(d) of Pub. L. 103–66, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99–514, set out as a note under section 163 of this title.

Amendment by section 701(e)(4)(E) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a pro-

ceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979; in a specified manner, see section 7(a)(1), (f) of Pub. L. 96–589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(21)(F) of 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.

Amendment by section 2115(c)(2) of Pub. L. 94–455 effective on Jan. 1, 1975 and applicable to taxable years ending after Dec. 31, 1974, see section 2115(f) of Pub. L. 94–455, set out as a note under section 613A of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 effective Jan. 1, 1975, to apply to taxable years ending after Dec. 31, 1974, see section 501(c) of Pub. L. 94–12, set out as an Effective Date note under section 613A of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91–172, set out as an Effective Date note under section 243 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date, see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(E) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 704. Partner's distributive share

(a) Effect of partnership agreement

A partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided in this chapter, be determined by the partnership agreement.

(b) Determination of distributive share

A partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances), if—

(1) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit (or item thereof), or

(2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect.

(c) Contributed property

(1) In general

Under regulations prescribed by the Secretary—

(A) income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution,

(B) if any property so contributed is distributed (directly or indirectly) by the partnership (other than to the contributing partner) within 7 years of being contributed—

(i) the contributing partner shall be treated as recognizing gain or loss (as the case may be) from the sale of such property in an amount equal to the gain or loss which would have been allocated to such partner under subparagraph (A) by reason of the variation described in subparagraph (A) if the property had been sold at its fair market value at the time of the distribution,

(ii) the character of such gain or loss shall be determined by reference to the character of the gain or loss which would have resulted if such property had been sold by the partnership to the distributee, and

(iii) appropriate adjustments shall be made to the adjusted basis of the contributing partner's interest in the partnership and to the adjusted basis of the property distributed to reflect any gain or loss recognized under this subparagraph, and

(C) if any property so contributed has a built-in loss—

(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value at the time of contribution.

For purposes of subparagraph (C), the term ''built-in loss'' means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value at the time of contribution.

(2) Special rule for distributions where gain or loss would not be recognized outside partnerships

Under regulations prescribed by the Secretary, if—

(A) property contributed by a partner (hereinafter referred to as the ''contributing partner'') is distributed by the partnership to another partner, and

(B) other property of a like kind (within the meaning of section 1031) is distributed by

the partnership to the contributing partner not later than the earlier of—

(i) the 180th day after the date of the distribution described in subparagraph (A), or

(ii) the due date (determined with regard to extensions) for the contributing partner's return of the tax imposed by this chapter for the taxable year in which the distribution described in subparagraph (A) occurs,

then to the extent of the value of the property described in subparagraph (B), paragraph (1)(B) shall be applied as if the contributing partner had contributed to the partnership the property described in subparagraph (B).

(3) Other rules

Under regulations prescribed by the Secretary, rules similar to the rules of paragraph (1) shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items. Any reference in paragraph (1) or (2) to the contributing partner shall be treated as including a reference to any successor of such partner.

(d) Limitation on allowance of losses

A partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

(e) Family partnerships

(1) Recognition of interest created by purchase or gift

A person shall be recognized as a partner for purposes of this subtitle if he owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person.

(2) Distributive share of donee includible in gross income

In the case of any partnership interest created by gift, the distributive share of the donee under the partnership agreement shall be includible in his gross income, except to the extent that such share is determined without allowance of reasonable compensation for services rendered to the partnership by the donor, and except to the extent that the portion of such share attributable to donated capital is proportionately greater than the share of the donor attributable to the donor's capital. The distributive share of a partner in the earnings of the partnership shall not be diminished because of absence due to military service.

(3) Purchase of interest by member of family

For purposes of this section, an interest purchased by one member of a family from another shall be considered to be created by gift from the seller, and the fair market value of the purchased interest shall be considered to be donated capital. The ''family'' of any individual shall include only his spouse, ancestors, and lineal descendants, and any trusts for the primary benefit of such persons.

(f) Cross reference

For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see section 706(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 240; Pub. L. 94–455, title II, §213(c)(2), (3)(A), (d), (e), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1548, 1834; Pub. L. 95–600, title II, §201(b)(1), Nov. 6, 1978, 92 Stat. 2816; Pub. L. 98–369, div. A, title I, §71(a), July 18, 1984, 98 Stat. 589; Pub. L. 101–239, title VII, §7642(a), Dec. 19, 1989, 103 Stat. 2379; Pub. L. 102–486, title XIX, §1937(b)(1), Oct. 24, 1992, 106 Stat. 3033; Pub. L. 105–34, title X, §1063(a), Aug. 5, 1997, 111 Stat. 947; Pub. L. 108–357, title VIII, §833(a), Oct. 22, 2004, 118 Stat. 1589.)

AMENDMENTS

2004—Subsec. (c)(1)(C). Pub. L. 108–357 added subpar. (C).

1997—Subsec. (c)(1)(B). Pub. L. 105–34 substituted ''7 years'' for ''5 years'' in introductory provisions.

1992—Subsec. (c)(1)(B). Pub. L. 102–486 substituted ''is distributed (directly or indirectly)'' for ''is distributed''.

1989—Subsec. (c). Pub. L. 101–239 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items.''

1984—Subsec. (c). Pub. L. 98–369 amended subsec. (c) generally, substituting provisions directing that, under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and that similar rules apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items for provisions which had directed that, if the partnership agreement so provided, depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would under regulations prescribed by the Secretary, be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and struck out provisions which had directed that in determining a partner's distributive share of items described in section 702(a), depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would, except to the extent otherwise provided, be allocated among the partners in the same manner as if such property had been purchased by the partnership and that if the partnership agreement did not provide otherwise, depreciation, depletion, or gain or loss with respect to undivided interests in property contributed to a partnership would be determined as though such undivided interests had not been contributed to the partnership.

1978—Subsec. (d). Pub. L. 95–600 struck out provisions relating to adjusted basis of a partner's interest.

1976—Subsec. (a). Pub. L. 94–455, § 213(c)(2), substituted ''except as otherwise provided in this chapter'' for ''except as otherwise provided in this section''.

Subsec. (b). Pub. L. 94–455, § 213(d), among other changes, substituted ''Determination of distributive share'' for ''Distributive share determined by income or loss ratio'' in heading, in provisions preceding par. (1) ''the partner's interest in the partnership (determined by taking into account all facts and circumstances)'' for ''his distributive share of taxable income or loss of the partnership, as described in section 702(a)(9), for the taxable year'', and in par. (2) provision relating to a lack of substantial economic effect in a partnership agreement for provisions relating to the partnership agreement's purpose being the avoidance or evasion of taxes.

Subsec. (c)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, § 213(e), inserted provision relating to the determination of the adjusted basis of a partner's liability where there is no personal liability and the applicability of such determination where section 465 of this title applies or the principal activity of the partnership is real estate investment.

Subsec. (f). Pub. L. 94–455, § 213(c)(3)(A), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 833(d)(1), Oct. 22, 2004, 118 Stat. 1592, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contributions made after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1063(b) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section and section 737 of this title] shall apply to property contributed to a partnership after June 8, 1997.

''(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply 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.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1937(c) of Pub. L. 102–486 provided that: ''The amendments made by this section [enacting section 737 of this title and amending this section and section 731 of this title] shall apply to distributions on or after June 25, 1992.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7642(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of property contributed to the partnership after October 3, 1989, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 71(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 613A and 743 of this title] shall apply with respect to property contributed to the partnership after March 31, 1984, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 and enactment of provision set out as a note under this section by section 201(b)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 204(a) of Pub. L. 95–600, set out as a note under section 465 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(2), (c)(3)(A), (d) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

Amendment by section 213(e) of Pub. L. 94–455 applicable to liabilities incurred after Dec. 31, 1976, see section 213(f)(2) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

TRANSITIONAL RULE FOR LIMITATION ON ALLOWANCE OF LOSSES

Section 201(b)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of a loss which was not allowed for any taxable year by reason of the last 2 sentences of section 704(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the date of the enactment of this Act [Nov. 6, 1978]), such loss shall be treated as a deduction (subject to section 465(a) of such Code) for the first taxable year beginning after December 31, 1978. Section 465(a) of such Code (as amended by this section) shall not apply with respect to partnership liabilities to which the last 2 sentences of section 704(d) of such Code (as in effect on the day before the date of enactment of this Act) did not apply because of the provisions of section 213(f)(2) of the Tax Reform Act of 1976 [set out as a note under section 709 of this title].''

§ 705. Determination of basis of partner's interest

(a) General rule

The adjusted basis of a partner's interest in a partnership shall, except as provided in subsection (b), be the basis of such interest determined under section 722 (relating to contributions to a partnership) or section 742 (relating to transfers of partnership interests)—

(1) increased by the sum of his distributive share for the taxable year and prior taxable years of—

(A) taxable income of the partnership as determined under section 703(a),

(B) income of the partnership exempt from tax under this title, and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion;

(2) decreased (but not below zero) by distributions by the partnership as provided in section 733 and by the sum of his distributive share for the taxable year and prior taxable years of—

(A) losses of the partnership, and

(B) expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account; and

(3) decreased (but not below zero) by the amount of the partner's deduction for depletion for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D).

(b) Alternative rule

The Secretary shall prescribe by regulations the circumstances under which the adjusted basis of a partner's interest in a partnership may be determined by reference to his proportionate share of the adjusted basis of partnership property upon a termination of the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 242; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), title XXI,

§ 2115(c)(3), Oct. 4, 1976, 90 Stat. 1834, 1909; Pub. L. 98–369, div. A, title VII, § 722(e)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98–369 substituted ''for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D)'' for ''under section 611 with respect to oil and gas wells''.

1976—Subsec. (a)(3). Pub. L. 94–455, § 2115(c)(3), added par. (3).

Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 722(e)(3)(A) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1975.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2115(c)(3) of Pub. L. 94–455 effective on Jan. 1, 1975, and applicable to taxable years ending after Dec. 31, 1974, see section 2115(f) of Pub. L. 94–455, set out as a note under section 613A of this title.

§ 706. Taxable years of partner and partnership

(a) Year in which partnership income is includible

In computing the taxable income of a partner for a taxable year, the inclusions required by section 702 and section 707(c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

(b) Taxable year

(1) Partnership's taxable year

(A) Partnership treated as taxpayer

The taxable year of a partnership shall be determined as though the partnership were a taxpayer.

(B) Taxable year determined by reference to partners

Except as provided in subparagraph (C), a partnership shall not have a taxable year other than—

(i) the majority interest taxable year (as defined in paragraph (4)),

(ii) if there is no taxable year described in clause (i), the taxable year of all the principal partners of the partnership, or

(iii) if there is no taxable year described in clause (i) or (ii), the calendar year unless the Secretary by regulations prescribes another period.

(C) Business purpose

A partnership may have a taxable year not described in subparagraph (B) if it establishes, to the satisfaction of the Secretary, a business purpose therefor. For purposes of this subparagraph, any deferral of income to partners shall not be treated as a business purpose.

(2) Partner's taxable year

A partner may not change to a taxable year other than that of a partnership in which he is a principal partner unless he establishes, to the satisfaction of the Secretary, a business purpose therefor.

(3) Principal partner

For the purpose of this subsection, a principal partner is a partner having an interest of 5 percent or more in partnership profits or capital.

(4) Majority interest taxable year; limitation on required changes

(A) Majority interest taxable year defined

For purposes of paragraph (1)(B)(i)—

(i) In general

The term ''majority interest taxable year'' means the taxable year (if any) which, on each testing day, constituted the taxable year of 1 or more partners having (on such day) an aggregate interest in partnership profits and capital of more than 50 percent.

(ii) Testing days

The testing days shall be—

(I) the 1st day of the partnership taxable year (determined without regard to clause (i)), or

(II) the days during such representative period as the Secretary may prescribe.

(B) Further change not required for 3 years

Except as provided in regulations necessary to prevent the avoidance of this section, if, by reason of paragraph (1)(B)(i), the taxable year of a partnership is changed, such partnership shall not be required to change to another taxable year for either of the 2 taxable years following the year of change.

(5) Application with other sections

Except as provided in regulations, for purposes of determining the taxable year to which a partnership is required to change by reason of this subsection, changes in taxable years of other persons required by this subsection, section 441(i), section 584(h),[1] section 644, or section 1378(a) shall be taken into account.

(c) Closing of partnership year

(1) General rule

Except in the case of a termination of a partnership and except as provided in paragraph (2) of this subsection, the taxable year of a partnership shall not close as the result of the death of a partner, the entry of a new partner, the liquidation of a partner's interest in the partnership, or the sale or exchange of a partner's interest in the partnership.

(2) Treatment of dispositions

(A) Disposition of entire interest

The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise).

(B) Disposition of less than entire interest

The taxable year of a partnership shall not close (other than at the end of a partner-

[1] See References in Text note below.

ship's taxable year as determined under subsection (b)(1)) with respect to a partner who sells or exchanges less than his entire interest in the partnership or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise).

(d) Determination of distributive share when partner's interest changes

(1) In general

Except as provided in paragraphs (2) and (3), if during any taxable year of the partnership there is a change in any partner's interest in the partnership, each partner's distributive share of any item of income, gain, loss, deduction, or credit of the partnership for such taxable year shall be determined by the use of any method prescribed by the Secretary by regulations which takes into account the varying interests of the partners in the partnership during such taxable year.

(2) Certain cash basis items prorated over period to which attributable

(A) In general

If during any taxable year of the partnership there is a change in any partner's interest in the partnership, then (except to the extent provided in regulations) each partner's distributive share of any allocable cash basis item shall be determined—

(i) by assigning the appropriate portion of such item to each day in the period to which it is attributable, and

(ii) by allocating the portion assigned to any such day among the partners in proportion to their interests in the partnership at the close of such day.

(B) Allocable cash basis item

For purposes of this paragraph, the term ''allocable cash basis item'' means any of the following items with respect to which the partnership uses the cash receipts and disbursements method of accounting:

(i) Interest.

(ii) Taxes.

(iii) Payments for services or for the use of property.

(iv) Any other item of a kind specified in regulations prescribed by the Secretary as being an item with respect to which the application of this paragraph is appropriate to avoid significant misstatements of the income of the partners.

(C) Items attributable to periods not within taxable year

If any portion of any allocable cash basis item is attributable to—

(i) any period before the beginning of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the first day of the taxable year, or

(ii) any period after the close of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the last day of the taxable year.

(D) Treatment of deductible items attributable to prior periods

If any portion of a deductible cash basis item is assigned under subparagraph (C)(i) to the first day of any taxable year—

(i) such portion shall be allocated among persons who are partners in the partnership during the period to which such portion is attributable in accordance with their varying interests in the partnership during such period, and

(ii) any amount allocated under clause (i) to a person who is not a partner in the partnership on such first day shall be capitalized by the partnership and treated in the manner provided for in section 755.

(3) Items attributable to interest in lower tier partnership prorated over entire taxable year

If—

(A) during any taxable year of the partnership there is a change in any partner's interest in the partnership (hereinafter in this paragraph referred to as the ''upper tier partnership''), and

(B) such partnership is a partner in another partnership (hereinafter in this paragraph referred to as the ''lower tier partnership''),

then (except to the extent provided in regulations) each partner's distributive share of any item of the upper tier partnership attributable to the lower tier partnership shall be determined by assigning the appropriate portion (determined by applying principles similar to the principles of subparagraphs (C) and (D) of paragraph (2)) of each such item to the appropriate days during which the upper tier partnership is a partner in the lower tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper tier partnership at the close of such day.

(4) Taxable year determined without regard to subsection (c)(2)(A)

For purposes of this subsection, the taxable year of a partnership shall be determined without regard to subsection (c)(2)(A).

(Aug. 16, 1954, ch. 736, 68A Stat. 242; Pub. L. 94–455, title II, § 213(c)(1), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1547, 1834; Pub. L. 98–369, div. A, title I, § 72(a), (b), July 18, 1984, 98 Stat. 589, 591; Pub. L. 99–514, title VIII, § 806(a), title XVIII, § 1805(a), Oct. 22, 1986, 100 Stat. 2362, 2810; Pub. L. 100–647, title I, § 1008(e)(1)–(3), Nov. 10, 1988, 102 Stat. 3439, 3440; Pub. L. 105–34, title V, § 507(b)(2), title XII, § 1246(a), (b), Aug. 5, 1997, 111 Stat. 857, 1030.)

REFERENCES IN TEXT

Section 584(h), referred to in subsec. (b)(5), was redesignated section 584(i) by Pub. L. 104–188, title I, § 1805(a), 110 Stat. 1894.

AMENDMENTS

1997—Subsec. (b)(5). Pub. L. 105–34, § 507(b)(2), substituted ''section 644'' for ''section 645''.

Subsec. (c)(2). Pub. L. 105–34, § 1246(b), substituted ''Treatment of dispositions'' for ''Partner who retires or sells interest in partnership'' as heading.

Subsec. (c)(2)(A). Pub. L. 105–34, §1246(a), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The taxable year of a partnership shall close—

''(i) with respect to a partner who sells or exchanges his entire interest in a partnership, and

''(ii) with respect to a partner whose interest is liquidated, except that the taxable year of a partnership with respect to a partner who dies shall not close prior to the end of the partnership's taxable year.''

1988—Subsec. (b)(1)(B)(i). Pub. L. 100–647, §1008(e)(1)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent,''.

Subsec. (b)(1)(B)(iii). Pub. L. 100–647, §1008(e)(2), substituted ''unless the Secretary by regulations prescribes another period'' for ''or such other period as the Secretary may prescribe in regulations''.

Subsec. (b)(4). Pub. L. 100–647, §1008(e)(1)(B), substituted ''Majority interest taxable year; limitation on required changes'' for ''Application of majority interest rule'' in heading and amended text generally. Prior to amendment, text read as follows: ''Clause (i) of paragraph (1)(B) shall not apply to any taxable year of a partnership unless the period which constitutes the taxable year of 1 or more of its partners who have an aggregate interest in partnership profits and capital of greater than 50 percent has been the same for—

''(A) the 3-taxable year period of such partner or partners ending on or before the beginning of such taxable year of the partnership, or

''(B) if the partnership has not been in existence during all of such 3-taxable year period, the taxable years of such partner or partners ending with or within the period of existence.

This paragraph shall apply without regard to whether the same partners or interests are taken into account in determining the 50 percent interest during any period.''

Subsec. (b)(5). Pub. L. 100–647, §1008(e)(3), added par. (5).

1986—Subsec. (b). Pub. L. 99–514, §806(a)(3), struck out ''Adoption of'' before ''taxable year'' in heading.

Subsec. (b)(1). Pub. L. 99–514, §806(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The taxable year of a partnership shall be determined as though the partnership were a taxpayer. A partnership may not change to, or adopt, a taxable year other than that of all its principal partners unless it establishes, to the satisfaction of the Secretary, a business purpose therefor.''

Subsec. (b)(4). Pub. L. 99–514, §806(a)(2), added par. (4).

Subsec. (d)(2)(A)(i). Pub. L. 99–514, §1805(a)(1)(A), substituted ''such item'' for ''each such item''.

Subsec. (d)(2)(B). Pub. L. 99–514, §1805(a)(1)(B), in introductory provisions, struck out ''which are described in paragraph (1) and'' after ''the following items''.

Subsec. (d)(2)(C)(i). Pub. L. 99–514, §1805(a)(2), substituted ''the first day of the taxable year'' for ''the first day of such taxable year''.

1984—Subsec. (c)(2)(A). Pub. L. 98–369, §72(b)(1), struck out last sentence providing that such partner's distributive share of item described in section 702(a) for such year shall be determined, under regulations prescribed by the Secretary, for the period ending with such sale, exchange, or liquidation.

Subsec. (c)(2)(B). Pub. L. 98–369, §72(b)(2), struck out '', but such partner's distributive share of items described in section 702(a) shall be determined by taking into account his varying interests in the partnership during the taxable year'' after ''otherwise)''.

Subsec. (d). Pub. L. 98–369, §72(a), added subsec. (d).

1976—Subsec. (b)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, §§213(c)(1), 1906(b)(13)(A), substituted ''or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise)'' for ''or with respect to a partner whose interest is reduced'', in par. (B), and struck out ''or his delegate'' after ''Secretary'' in par. (A).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 507(b)(2) of Pub. L. 105–34 applicable to sales or exchanges after Aug. 5, 1997, see section 507(c)(2) of Pub. L. 105–34, set out as a note under section 644 of this title.

Section 1246(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to partnership taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 806(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99–514, set out as a note under section 1378 of this title.

Amendment by section 1805(a) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 72(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply—

''(1) in the case of items described in section 706(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)), to amounts attributable to periods after March 31, 1984, and

''(2) in the case of items described in section 706(d)(3) of such Code (as added by subsection (a)), to amounts paid or accrued by the other partnership after March 31, 1984.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(1) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99–514

Nothing in section 806 of Pub. L. 99–514 or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100–647, set out as a note under section 1378 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 707. Transactions between partner and partnership

(a) Partner not acting in capacity as partner

(1) In general

If a partner engages in a transaction with a partnership other than in his capacity as a member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner.

(2) Treatment of payments to partners for property or services

Under regulations prescribed by the Secretary—

(A) Treatment of certain services and transfers of property

If—

(i) a partner performs services for a partnership or transfers property to a partnership,

(ii) there is a related direct or indirect allocation and distribution to such partner, and

(iii) the performance of such services (or such transfer) and the allocation and distribution, when viewed together, are properly characterized as a transaction occurring between the partnership and a partner acting other than in his capacity as a member of the partnership,

such allocation and distribution shall be treated as a transaction described in paragraph (1).

(B) Treatment of certain property transfers

If—

(i) there is a direct or indirect transfer of money or other property by a partner to a partnership,

(ii) there is a related direct or indirect transfer of money or other property by the partnership to such partner (or another partner), and

(iii) the transfers described in clauses (i) and (ii), when viewed together, are properly characterized as a sale or exchange of property,

such transfers shall be treated either as a transaction described in paragraph (1) or as a transaction between 2 or more partners acting other than in their capacity as members of the partnership.

(b) Certain sales or exchanges of property with respect to controlled partnerships

(1) Losses disallowed

No deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between—

(A) a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, or

(B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

In the case of a subsequent sale or exchange by a transferee described in this paragraph, section 267(d) shall be applicable as if the loss were disallowed under section 267(a)(1). For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).

(2) Gains treated as ordinary income

In the case of a sale or exchange, directly or indirectly, of property, which in the hands of the transferee, is property other than a capital asset as defined in section 1221—

(A) between a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or profits interest, in such partnership, or

(B) between two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interest or profits interests,

any gain recognized shall be considered as ordinary income.

(3) Ownership of a capital or profits interest

For purposes of paragraphs (1) and (2) of this subsection, the ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) other than paragraph (3) of such section.

(c) Guaranteed payments

To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61(a) (relating to gross income) and, subject to section 263, for purposes of section 162(a) (relating to trade or business expenses).

(Aug. 16, 1954, ch. 736, 68A Stat. 243; Pub. L. 94–455, title II, § 213(b)(3), title XIX, § 1901(b)(3)(C), Oct. 4, 1976, 90 Stat. 1547, 1792; Pub. L. 98–369, div. A, title I, § 73(a), July 18, 1984, 98 Stat. 591; Pub. L. 99–514, title VI, § 642(a)(2), title XVIII, §§ 1805(b), 1812(c)(3)(A), (B), Oct. 22, 1986, 100 Stat. 2284, 2810, 2834.)

AMENDMENTS

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–514, § 1805(b), substituted ''sale or exchange of property'' for ''sale of property''.

Subsec. (b)(1). Pub. L. 99–514, § 1812(c)(3)(B), inserted at end ''For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).''

Subsec. (b)(1)(A). Pub. L. 99–514, § 1812(c)(3)(A), substituted ''a person'' for ''a partner''.

Subsec. (b)(2)(A). Pub. L. 99–514, § 1812(c)(3)(A), substituted ''a person'' for ''a partner''.

Pub. L. 99–514, § 642(a)(2), substituted ''50 percent'' for ''80 percent''.

Subsec. (b)(2)(B). Pub. L. 99–514, § 642(a)(2), substituted ''50 percent'' for ''80 percent''.

1984—Subsec. (a). Pub. L. 98–369 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (b)(2). Pub. L. 94–455, § 1901(b)(3)(C), substituted ''as ordinary income'' for ''as gain from the sale or exchange of property other than a capital asset''.

Subsec. (c). Pub. L. 94–455, § 213(b)(3), substituted ''and, subject to section 263, for purposes of section 162(a)'' for ''and section 162(a)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(a)(2) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, in taxable years ending after such date, but not applicable to sales made after Aug. 14, 1986, which are made pursuant to a binding contract in effect on Aug. 14, 1986, and at all times thereafter, see section 642(c) of Pub. L. 99–514, set out as a note under section 1239 of this title.

Amendment by sections 1805(b) and 1812(c)(3)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1812(c)(3)(A) of Pub. L. 99–514 provided that the amendment made by that section is effective with respect to sales or exchanges after Sept. 27, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 73(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply—

''(A) in the case of arrangements described in section 707(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)), to services performed or property transferred after February 29, 1984, and

''(B) in the case of transfers described in section 707(a)(2)(B) of such Code (as so amended), to property transferred after March 31, 1984.

''(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) if such transfer is pursuant to a binding contract in effect on March 31, 1984, and at all times thereafter before the transfer.

''(3) EXCEPTION FOR CERTAIN TRANSFERS.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) that is made before December 31, 1984, if—

''(A) such transfer was proposed in a written private offering memorandum circulated before February 28, 1984;

''(B) the out-of-pocket costs incurred with respect to such offering exceeded $250,000 as of February 28, 1984;

''(C) the encumbrances placed on such property in anticipation of such transfer all constitute obligations for which neither the partnership nor any partner is liable; and

''(D) the transferor of such property is the sole general partner of the partnership.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(b)(3) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as an Effective Date note under section 709 of this title.

Amendment by section 1901(b)(3)(C) of 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.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 708. Continuation of partnership

(a) General rule

For purposes of this subchapter, an existing partnership shall be considered as continuing if it is not terminated.

(b) Termination

(1) General rule

For purposes of subsection (a), a partnership shall be considered as terminated only if—

(A) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or

(B) within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

(2) Special rules

(A) Merger or consolidation

In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(B) Division of a partnership

In the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) shall, for purposes of this section, be considered a continuation of the prior partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 244.)

§ 709. Treatment of organization and syndication fees

(a) General rule

Except as provided in subsection (b), no deduction shall be allowed under this chapter to the partnership or to any partner for any amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in such partnership.

(b) Deduction of organization fees

(1) Allowance of deduction

If a partnership elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

(A) the partnership shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

(i) the amount of organizational expenses with respect to the partnership, or

(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning

with the month in which the partnership begins business.

(2) Dispositions before close of amortization period

In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(3) Organizational expenses defined

The organizational expenses to which paragraph (1) applies, are expenditures which—

(A) are incident to the creation of the partnership;

(B) are chargeable to capital account; and

(C) are of a character which, if expended incident to the creation of a partnership having an ascertainable life, would be amortized over such life.

(Added Pub. L. 94–455, title II, § 213(b)(1), Oct. 4, 1976, 90 Stat. 1547; amended Pub. L. 108–357, title VIII, § 902(c), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 109–135, title IV, § 403(*ll*), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135 substituted ''partnership'' for ''taxpayer'' in introductory provisions and before ''shall be allowed'' in subpar. (A).

2004—Subsec. (b). Pub. L. 108–357 substituted ''Deduction'' for ''Amortization'' in heading, added par. (2), redesignated former par. (2) as (3), and amended heading and text of par. (1) generally. Prior to amendment, text of par. (1) read as follows: ''Amounts paid or incurred to organize a partnership may, at the election of the partnership (made in accordance with regulations prescribed by the Secretary), be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the partnership (beginning with the month in which the partnership begins business), or if the partnership is liquidated before the end of such 60-month period, such deferred expenses (to the extent not deducted under this section) may be deducted to the extent provided in section 165.''

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

Amendment by Pub. L. 108–357 applicable to amounts paid or incurred after Oct. 22, 2004, see section 902(d) of Pub. L. 108–357, set out as a note under section 195 of this title.

EFFECTIVE DATE

Section 213(f) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 179, 704, 706, 707, and 761 of this title] shall apply in the case of partnership taxable years beginning after December 31, 1975.

''(2) SUBSECTION (e).—The amendment made by subsection (e) [amending section 704 of this title] shall apply to liabilities incurred after December 31, 1976.

''(3) SECTION 709(b) OF THE CODE.—Section 709(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the amendment made by subsection (b)(1) of this section) shall apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1976.''

PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

Subpart
A. Contributions to a partnership.
B. Distributions by a partnership.
C. Transfers of interests in a partnership.
D. Provisions common to other subparts.

SUBPART A—CONTRIBUTIONS TO A PARTNERSHIP

Sec.
721. Nonrecognition of gain or loss on contribution.
722. Basis of contributing partner's interest.
723. Basis of property contributed to partnership.
724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title I, § 74(c), July 18, 1984, 98 Stat. 593, added item 724.

§ 721. Nonrecognition of gain or loss on contribution

(a) General rule

No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

(b) Special rule

Subsection (a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

(c) Regulations relating to certain transfers to partnerships

The Secretary may provide by regulations that subsection (a) shall not apply to gain realized on the transfer of property to a partnership if such gain, when recognized, will be includible in the gross income of a person other than a United States person.

(d) Transfers of intangibles

For regulatory authority to treat intangibles transferred to a partnership as sold, see section 367(d)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, § 2131(b), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 105–34, title XI, § 1131(b)(3), (5)(B), Aug. 5, 1997, 111 Stat. 979, 980.)

CODIFICATION

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34, § 1131(b)(3), added subsec. (c).

Subsec. (d). Pub. L. 105–34, § 1131(b)(5)(B), added subsec. (d).

1976—Pub. L. 94–455 designated existing provisions as subsec. (a), added subsec. (a) heading ''General rule'', and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2131(f)(3)–(5) of Pub. L. 94–455 provided that:

''(3) Except as provided in paragraph (4), the amendments made by subsections (b) and (c) [amending this section and sections 722 and 723 of this title] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

''(4) The amendments made by subsections (b) and (c) shall not apply to transfers to a partnership made on or before the 90th day after the date of the enactment of this Act [Oct. 4, 1976] if—

''(A) either—

''(i) a ruling request with respect to such transfers was filed with the Internal Revenue Service before March 27, 1976, or

''(ii) a registration statement with respect to such transfers was filed with the Securities and Exchange Commission before March 27, 1976,

''(B) the securities transferred were deposited on or before the 60th day after the date of the enactment of this Act [Oct. 4, 1976], and

''(C) either—

''(i) the aggregate value (determined as of the close of the 60th day referred to in subparagraph (B), or, if earlier, the close of the deposit period) of the securities so transferred does not exceed $100,000,000, or

''(ii) the securities transferred were all on deposit on February 29, 1976, pursuant to a registration statement referred to in subparagraph (A)(ii).

''(5) If no registration statement was required to be filed with the Securities and Exchange Commission with respect to the transfer of securities to any partnership, then paragraph (4) shall be applied to such transfers—

''(A) as if paragraph (4) did not contain subparagraph (A)(ii) thereof, and

''(B) by substituting '$25,000,000' for '$100,000,000' in subparagraph (C)(i) thereof.''

§ 722. Basis of contributing partner's interest

The basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, § 2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98–369, div. A, title VII, § 722(f)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98–369 inserted ''under section 721(b)'' after ''gain recognized''.

1976—Pub. L. 94–455 inserted ''increased by the amount (if any) of gain recognized to the contributing partner at such time'' after ''at the time of the contribution''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 722(f)(2) of Pub. L. 98–369 provided that: ''The amendments made by paragraph (1) [amending this section and section 723 of this title] shall take effect as if included in the amendments made by section 2131 of the Tax Reform Act of 1976 [Pub. L. 94–455].''

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94–455, see section 2131(f)(3)–(5) of Pub. L. 94–455, set out as a note under section 721 of this title.

§ 723. Basis of property contributed to partnership

The basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94–455, title XXI, § 2131(c), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 98–369, div. A, title VII, § 722(f)(1), July 18, 1984, 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98–369 inserted ''under section 721(b)'' after ''gain recognized''.

1976—Pub. L. 94–455 inserted ''increased by the amount (if any) of gain recognized to the contributing partner at such time'' after ''at the time of the contribution''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in amendments made by section 2131 of the Tax Reform Act of 1976, Pub. L. 94–455, see section 722(f)(2) of Pub. L. 98–369, set out as a note under section 722 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment made by Pub. L. 94–455, see section 2131(f)(3)–(5) of Pub. L. 94–455, set out as a note under section 721 of this title.

§ 724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property

(a) Contributions of unrealized receivables

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an unrealized receivable in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property shall be treated as ordinary income or ordinary loss, as the case may be.

(b) Contributions of inventory items

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an inventory item in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as ordinary income or ordinary loss, as the case may be.

(c) Contributions of capital loss property

In the case of any property which—

(1) was contributed by a partner to the partnership, and

(2) was a capital asset in the hands of such partner immediately before such contribution,

any loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as a loss from the sale of a capital asset to the extent that, immediately before such contribution, the adjusted basis of such property in the hands of the partner exceeded the fair market value of such property.

(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

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.

(4) Effect of termination of partnership

This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

(5) Certain basis reductions treated as losses

In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be reduced by the amount of such basis reduction.

(6) Electing investment partnership

For purposes of this subsection, the term ''electing investment partnership'' means any partnership if—

(A) the partnership makes an election to have this subsection apply,

(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

(C) such partnership has never been engaged in a trade or business,

(D) substantially all of the assets of such partnership are held for investment,

(E) at least 95 percent of the assets contributed to such partnership consist of money,

(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering before the date which is 24 months after the date of the first capital contribution to such partnership,

(H) the partnership agreement of such partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and

(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

(7) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.

(f) Exception for securitization partnerships

(1) No adjustment of partnership basis

For purposes of this section, a securitization partnership shall not be treated as having a substantial built-in loss with respect to any transfer.

(2) Securitization partnership

For purposes of paragraph (1), the term ''securitization partnership'' means any partnership the sole business activity of which is to issue securities which provide for a fixed principal (or similar) amount and which are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of.

(Aug. 16, 1954, ch. 736, 68A Stat. 249; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §71(b), July 18, 1984, 98 Stat. 589; Pub. L. 108–357, title VIII, §833(b)(1)–(4)(A), (5), (6)(A), Oct. 22, 2004, 118 Stat. 1589, 1591.)

REFERENCES IN TEXT

Section 3(a)(1)(A), (c)(1), (7) of the Investment Company Act of 1940, referred to in subsec. (e)(6)(B), is classified to section 80a–3(a)(1)(A), (c)(1), (7) of Title 15, Commerce and Trade.

AMENDMENTS

2004—Pub. L. 108–357, §833(b)(6)(A), substituted ''Special rules where section 754 election or substantial built-in loss'' for ''Optional adjustment to basis of partnership property'' in section catchline.

Subsec. (a). Pub. L. 108–357, §833(b)(1), inserted ''or unless the partnership has a substantial built-in loss immediately after such transfer'' before period at end.

Subsec. (b). Pub. L. 108–357, §833(b)(2), inserted ''or which has a substantial built-in loss immediately after such transfer'' after ''section 754 is in effect'' in introductory provisions.

Subsec. (d). Pub. L. 108–357, §833(b)(3), added subsec. (d).

Subsec. (e). Pub. L. 108–357, §833(b)(4)(A), added subsec. (e).

Subsec. (f). Pub. L. 108–357, §833(b)(5), added subsec. (f).

1984—Subsec. (b). Pub. L. 98–369 substituted ''property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share'' for ''an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account'' in penultimate sentence.

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, §833(d)(2), Oct. 22, 2004, 118 Stat. 1592, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section and section 6031 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 2004].

''(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and section 743(e)(6)(I) of such Code, as so added, shall be applied by substituting '20 years' for '15 years'.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98–369, set out as a note under section 704 of this title.

SUBPART D—PROVISIONS COMMON TO OTHER SUBPARTS

Sec.
751. Unrealized receivables and inventory items.

Sec.
752. Treatment of certain liabilities.
753. Partner receiving income in respect of decedent.
754. Manner of electing optional adjustment to basis of partnership property.
755. Rules for allocation of basis.

§ 751. Unrealized receivables and inventory items

(a) Sale or exchange of interest in partnership

The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—

(1) unrealized receivables of the partnership, or

(2) inventory items of the partnership,

shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

(b) Certain distributions treated as sales or exchanges

(1) General rule

To the extent a partner receives in a distribution—

(A) partnership property which is—

(i) unrealized receivables, or

(ii) inventory items which have appreciated substantially in value,

in exchange for all or a part of his interest in other partnership property (including money), or

(B) partnership property (including money) other than property described in subparagraph (A)(i) or (ii) in exchange for all or a part of his interest in partnership property described in subparagraph (A)(i) or (ii),

such transactions shall, under regulations prescribed by the Secretary, be considered as a sale or exchange of such property between the distributee and the partnership (as constituted after the distribution).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a distribution of property which the distributee contributed to the partnership, or

(B) payments, described in section 736(a), to a retiring partner or successor in interest of a deceased partner.

(3) Substantial appreciation

For purposes of paragraph (1)—

(A) In general

Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property.

(B) Certain property excluded

For purposes of subparagraph (A), there shall be excluded any inventory property if a principal purpose for acquiring such property was to avoid the provisions of this subsection relating to inventory items.

(c) Unrealized receivables

For purposes of this subchapter, the term ''unrealized receivables'' includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

(1) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or

(2) services rendered, or to be rendered.

For purposes of this section and,[1] sections 731, 732, and 741 (but not for purposes of section 736), such term also includes mining property (as defined in section 617(f)(2)), stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3)), stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1252(a), 1253(a), or 1254(a) would apply if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership at its fair market value. For purposes of this section and,[1] sections 731, 732, and 741 (but not for purposes of section 736), such term also includes any market discount bond (as defined in section 1278) and any short-term obligation (as defined in section 1283) but only to the extent of the amount which would be treated as ordinary income if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership.

(d) Inventory items

For purposes of this subchapter, the term ''inventory items'' means—

(1) property of the partnership of the kind described in section 1221(a)(1),

(2) any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 1231, and

(3) any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in paragraph (1) or (2).

(e) Limitation on tax attributable to deemed sales of section 1248 stock

For purposes of applying this section and sections 731 and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporation).

(f) Special rules in the case of tiered partnerships, etc.

In determining whether property of a partnership is—

[1] So in original. The comma probably should not appear.

(1) an unrealized receivable, or
(2) an inventory item,

such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner. Under regulations, rules similar to the rules of the preceding sentence shall also apply in the case of interests in trusts.

(Aug. 16, 1954, ch. 736, 68A Stat. 250; Pub. L. 87–834, §§13(f)(1), 14(b)(2), Oct. 16, 1962, 76 Stat. 1035, 1041; Pub. L. 88–272, title II, §231(b)(6), Feb. 26, 1964, 78 Stat. 105; Pub. L. 89–570, §1(c), Sept. 12, 1966, 80 Stat. 762; Pub. L. 91–172, title II, §211(b)(6), Dec. 30, 1969, 83 Stat. 570; Pub. L. 94–455, title II, §205(b), title X, §1042(c)(2), title XI, §1101(d)(2), title XIX, §§1901(a)(93), 1906(b)(13)(A), title XXI, §2110(a), Oct. 4, 1976, 90 Stat. 1535, 1637, 1658, 1780, 1834, 1905; Pub. L. 95–600, title VII, §701(u)(13)(A), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 95–618, title IV, §402(c)(5), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97–448, title I, §102(a)(6), Jan. 12, 1983, 96 Stat. 2368; Pub. L. 98–369, div. A, title I, §§43(c)(3), 76(a), title IV, §492(b)(4), July 18, 1984, 98 Stat. 558, 595, 854; Pub. L. 99–514, title II, §201(d)(10), title XVIII, §1899A(19), Oct. 22, 1986, 100 Stat. 2141, 2959; Pub. L. 103–66, title XIII, §§13206(e)(1), 13262(b)(1), (2)(A), Aug. 10, 1993, 107 Stat. 467, 541; Pub. L. 105–34, title X, §1062(a)–(b)(2), Aug. 5, 1997, 111 Stat. 946, 947; Pub. L. 105–206, title VI, §6010(m), July 22, 1998, 112 Stat. 816; Pub. L. 106–170, title V, §532(c)(2)(F), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108–357, title IV, §413(c)(11), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (d)(2) to (4). Pub. L. 108–357 inserted ''and'' at end of par. (2), redesignated par. (4) as (3) and substituted ''paragraph (1) or (2)'' for ''paragraph (1), (2), or (3)'', and struck out former par. (3) which read as follows: ''any other property of the partnership which, if sold or exchanged by the partnership, would result in a gain taxable under subsection (a) of section 1246 (relating to gain on foreign investment company stock), and''.

1999—Subsec. (d)(1). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1998—Subsec. (c). Pub. L. 105–206 substituted ''731, 732,'' for ''731'' wherever appearing in concluding provisions.

1997—Subsec. (a)(2). Pub. L. 105–34, §1062(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''inventory items of the partnership which have appreciated substantially in value,''.

Subsec. (b)(1). Pub. L. 105–34, §1062(b)(1)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) partnership property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in other partnership property (including money), or

''(B) partnership property (including money) other than property described in subsection (a)(1) or (2) in exchange for all or a part of his interest in partnership property described in subsection (a)(1) or (2),''.

Subsec. (b)(3). Pub. L. 105–34, §1062(b)(1)(B), added par. (3).

Subsec. (d). Pub. L. 105–34, §1062(b)(2), amended heading and text of subsec. (d) generally. Prior to amendment, subsec. (d) consisted of pars. (1) and (2) relating to inventory items which have appreciated substantially in value.

1993—Subsec. (c). Pub. L. 103–66, §13262(b)(1), in concluding provisions, substituted ''section 731 or 741'' for ''section 731, 736, or 741'' in two places and '', sections 731 and 741 (but not for purposes of section 736)'' for ''sections 731, 736, and 741'' in two places.

Subsec. (d)(1). Pub. L. 103–66, §13206(e)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds—

''(A) 120 percent of the adjusted basis to the partnership of such property, and

''(B) 10 percent of the fair market value of all partnership property, other than money.''

Subsec. (e). Pub. L. 103–66, §13262(b)(2)(A), substituted ''sections 731 and 741'' for ''sections 731, 736, and 741''.

1986—Subsec. (c). Pub. L. 99–514, §1899A(19), substituted ''section 617(f)(2)), stock'' for ''section 617(f)(2), stock'' in second sentence.

Pub. L. 99–514, §201(d)(10), struck out ''section 1245 recovery property (as defined in section 1245(a)(5)),'' before ''stock in certain foreign corporations'' in second sentence.

1984—Subsec. (c). Pub. L. 98–369, §492(b)(4), struck out ''farm recapture property (as defined in section 1251(e)(1)),'' before ''farm land'', and ''1251(c),'' after ''1250(a),'' in second sentence.

Pub. L. 98–369, §43(c)(3), inserted last sentence.

Subsec. (f). Pub. L. 98–369, §76(a), added subsec. (f).

1983—Subsec. (c). Pub. L. 97–448 inserted reference to section 1245 recovery property (as defined in section 1245(a)(5)) in second sentence.

1978—Subsec. (c). Pub. L. 95–618 substituted ''oil, gas, or geothermal property'' for ''oil or gas property'' in second sentence.

Subsec. (e). Pub. L. 95–600 added subsec. (e).

1976—Subsec. (b)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, §§205(b), 1042(c)(2), 1101(d)(2), 1901(a)(93), 2110(a), in second sentence, inserted reference to stock in a DISC (as described in section 992(a)), reference to stock in certain foreign corporations (as described in section 1248), and reference to farm land (as defined in section 1252(a)), franchises, trademarks or trade names (referred to in section 1253(a)), and an oil or gas property (described in section 1254), substituted ''1252(a), 1253(a), or 1254(a)'' for ''or 1252(a)'', and inserted ''1248(a),'' after ''1245(a),'' and ''995(c),'' after ''617(d)(1),''.

1969—Subsec. (c). Pub. L. 91–172, in second sentence, substituted ''section 1250 property (as defined in section 1250(c)), farm recapture property (as defined in section 1251(e)(1)), and farm land (as defined in section 1252(a))'', and ''1250(a), 1251(c), or 1252(a)'', for ''and section 1250 property (as defined in section 1250(c))'' and ''1250(a)'', respectively.

1966—Subsec. (c). Pub. L. 89–570, in second sentence, inserted reference to mining property (as defined in section 617(f)(2)) and to section 617(d)(1).

1964—Subsec. (c). Pub. L. 88–272, in second sentence, inserted reference to section 1250.

1962—Subsec. (c). Pub. L. 87–834, §13(f)(1), defined ''unrealized receivables'' for purposes of this section and section 731, 736, and 741, as including section 1245 property, but only to the extent of the amount which would be treated as gain to which section 1245(a) would apply if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

Subsec. (d)(2). Pub. L. 87–834, §14(b)(2), added subpar. (C), redesignated former subpar. (C) as (D), and substituted ''subparagraph (A), (B), or (C)'' for ''subparagraph (A) or (B)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

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 1993 AMENDMENT

Section 13206(e)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to sales, exchanges, and distributions after April 30, 1993.''

Amendment by section 13262(b)(1) and (2)(A) of Pub. L. 103–66 applicable in the case of partners retiring or dying on or after Jan. 5, 1993, with a binding contract exception, see section 13262(c) of Pub. L. 103–66, set out as a note under section 736 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 201(d)(10) of Pub. L. 99–514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99–514, set out as a note under section 168 of this title.

Amendment by section 201(d)(10) of Pub. L. 99–514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99–514, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(c)(3) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Section 76(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions, sales, and exchanges made after March 31, 1984, in taxable years ending after such date.''

Amendment by section 492(b)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as a note under section 263 of this title.

Section 701(u)(13)(C) of Pub. L. 95–600 provided that: ''The amendments made by this paragraph [amending this section and section 736 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(b) of Pub. L. 94–455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94–455, set out as an Effective Date note under section 1254 of this title.

Amendment by section 1042(c)(2) of Pub. L. 94–455 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges and distributions taking place after that date, see section 1042(e)(1) of Pub. L. 94–455, set out as a note under section 367 of this title.

Amendment by section 1101(d)(2) of Pub. L. 94–455 applicable to sales, exchanges, or other dispositions after Dec. 31, 1975, in taxable years ending after such date, see section 1101(g)(4) of Pub. L. 94–455, set out as a note under section 995 of this title.

Amendment by section 1901(a)(93) of 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.

Section 2110(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Subsection (a) [amending this section] shall apply to transactions described in sections 731, 736, 741, or 751 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which occur after December 31, 1976, in taxable years ending after that date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91–172, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date see section 3 of Pub. L. 89–570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88–272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(f)(1) of Pub. L. 87–834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87–834, set out as an Effective Date note under section 1245 of this title.

Amendment by section 14(b)(2) of Pub. L. 87–834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87–834, set out as a note under section 312 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 752. Treatment of certain liabilities

(a) Increase in partner's liabilities

Any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the as-

sumption by such partner of partnership liabilities, shall be considered as a contribution of money by such partner to the partnership.

(b) Decrease in partner's liabilities

Any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, shall be considered as a distribution of money to the partner by the partnership.

(c) Liability to which property is subject

For purposes of this section, a liability to which property is subject shall, to the extent of the fair market value of such property, be considered as a liability of the owner of the property.

(d) Sale or exchange of an interest

In the case of a sale or exchange of an interest in a partnership, liabilities shall be treated in the same manner as liabilities in connection with the sale or exchange of property not associated with partnerships.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

OVERRULING OF RAPHAN CASE

Pub. L. 98–369, div. A, title I, § 79, July 18, 1984, 98 Stat. 597, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Section 752 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (and the regulations prescribed thereunder) shall be applied without regard to the result reached in the case of Raphan vs the United States, 3 Cl. Ct. 457 (1983).

''(b) REGULATIONS.—In amending the regulations prescribed under section 752 of such Code to reflect subsection (a), the Secretary of the Treasury or his delegate shall prescribe regulations relating to liabilities, including the treatment of guarantees, assumptions, indemnity agreements, and similar arrangements.''

§ 753. Partner receiving income in respect of decedent

The amount includible in the gross income of a successor in interest of a deceased partner under section 736(a) shall be considered income in respect of a decedent under section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

§ 754. Manner of electing optional adjustment to basis of partnership property

If a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 251; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

§ 755. Rules for allocation of basis

(a) General rule

Any increase or decrease in the adjusted basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) shall, except as provided in subsection (b), be allocated—

(1) in a manner which has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties, or

(2) in any other manner permitted by regulations prescribed by the Secretary.

(b) Special rule

In applying the allocation rules provided in subsection (a), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, property consisting of—

(1) capital assets and property described in section 1231(b), or

(2) any other property of the partnership,

shall be allocated to partnership property of a like character except that the basis of any such partnership property shall not be reduced below zero. If, in the case of a distribution, the adjustment to basis of property described in paragraph (1) or (2) is prevented by the absence of such property or by insufficient adjusted basis for such property, such adjustment shall be applied to subsequently acquired property of a like character in accordance with regulations prescribed by the Secretary.

(c) No allocation of basis decrease to stock of corporate partner

In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108–357, title VIII, § 834(a), Oct. 22, 2004, 118 Stat. 1592.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357 added subsec. (c).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 834(b), Oct. 22, 2004, 118 Stat. 1592, provided that: ''The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].''

PART III—DEFINITIONS

Sec.
761. Terms defined.

§ 761. Terms defined

(a) Partnership

For purposes of this subtitle, the term ''partnership'' includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

(1) for investment purposes only and not for the active conduct of a business,

(2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or

(3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) Partner

For purposes of this subtitle, the term ''partner'' means a member of a partnership.

(c) Partnership agreement

For purposes of this subchapter, a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions) which are agreed to by all the partners, or which are adopted in such other manner as may be provided by the partnership agreement.

(d) Liquidation of a partner's interest

For purposes of this subchapter, the term ''liquidation of a partner's interest'' means the termination of a partner's entire interest in a partnership by means of a distribution, or a series of distributions, to the partner by the partnership.

(e) Distributions of partnership interests treated as exchanges

Except as otherwise provided in regulations, for purposes of—

(1) section 708 (relating to continuation of partnership),

(2) section 743 (relating to optional adjustment to basis of partnership property), and

(3) any other provision of this subchapter specified in regulations prescribed by the Secretary,

any distribution of an interest in a partnership (not otherwise treated as an exchange) shall be treated as an exchange.

(f) Qualified joint venture

(1) In general

In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

(A) such joint venture shall not be treated as a partnership,

(B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and

(C) each spouse shall take into account such spouse's respective share of such items as if they were attributable to a trade or business conducted by such spouse as a sole proprietor.

(2) Qualified joint venture

For purposes of paragraph (1), the term ''qualified joint venture'' means any joint venture involving the conduct of a trade or business if—

(A) the only members of such joint venture are a husband and wife,

(B) both spouses materially participate (within the meaning of section 469(h) without regard to paragraph (5) thereof) in such trade or business, and

(C) both spouses elect the application of this subsection.

(g) Cross reference

For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see sections 704(b) and 706(c)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94–455, title II, § 213(c)(3)(B), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1548, 1834; Pub. L. 96–222, title I, § 102(a)(2)(C), Apr. 1, 1980, 94 Stat. 208; Pub. L. 98–369, div. A, title I, § 75(b), July 18, 1984, 98 Stat. 594; Pub. L. 99–514, title XVIII, § 1805(c)(2), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 110–28, title VIII, § 8215(a), May 25, 2007, 121 Stat. 193.)

AMENDMENTS

2007—Subsecs. (f), (g). Pub. L. 110–28 added subsec. (f) and redesignated former subsec. (f) as (g).

1986—Subsec. (e). Pub. L. 99–514 substituted ''Distributions of partnership interests'' for ''Distributions'' in heading, substituted ''Except as otherwise provided in regulations, for purposes of'' for ''For purposes of'' in introductory provision, and ''any distribution of an interest in a partnership'' for ''any distribution'' in closing provisions.

1984—Subsecs. (e), (f). Pub. L. 98–369 added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (a)(3). Pub. L. 96–222 added par. (3).

1976—Subsec. (a). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e). Pub. L. 94–455, § 213(c)(3)(B), added subsec. (e).

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VIII, § 8215(c), May 25, 2007, 121 Stat. 194, provided that: ''The amendments made by this section [amending this section, section 1402 of this title, and section 411 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to distributions, sales, and exchanges made after Mar. 31, 1984, in taxable years ending after such date, see section 75(e) of Pub. L. 98–369, set out as an Effective Date note under section 386 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(3)(B) of Pub. L. 94–455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94–455, set out as a note under section 709 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PART IV—SPECIAL RULES FOR ELECTING LARGE PARTNERSHIPS

Sec.
771. Application of subchapter to electing large partnerships.
772. Simplified flow-through.
773. Computations at partnership level.
774. Other modifications.
775. Electing large partnership defined.
776. Special rules for partnerships holding oil and gas properties.
777. Regulations.

PRIOR PROVISIONS

A prior part IV, relating to effective date for subchapter, consisted of section 771 of this title, prior to repeal by Pub. L. 94–455, title XIX, § 1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

AMENDMENTS

1997—Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1001, added part heading and section analysis.

§ 771. Application of subchapter to electing large partnerships

The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to an electing large partnership and its partners.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1002.)

PRIOR PROVISIONS

A prior section 771, act Aug. 16, 1954, ch. 736, 68A Stat. 253, related to the effective date for this subchapter, prior to repeal by Pub. L. 94–455, title XIX, § 1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

EFFECTIVE DATE

Section 1221(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [enacting this part] shall apply to partnership taxable years beginning after December 31, 1997.''

This part applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105–34, as amended, set out as an Effective Date of 1997 Amendment note under section 6011 of this title.

§ 772. Simplified flow-through

(a) General rule

In determining the income tax of a partner of an electing large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

(1) taxable income or loss from passive loss limitation activities,

(2) taxable income or loss from other activities,

(3) net capital gain (or net capital loss)—

(A) to the extent allocable to passive loss limitation activities, and

(B) to the extent allocable to other activities,

(4) tax-exempt interest,

(5) applicable net AMT adjustment separately computed for—

(A) passive loss limitation activities, and

(B) other activities,

(6) general credits,

(7) low-income housing credit determined under section 42,

(8) rehabilitation credit determined under section 47,

(9) foreign income taxes, and

(10) other items to the extent that the Secretary determines that the separate treatment of such items is appropriate.

(b) Separate computations

In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

(c) Treatment at partner level

(1) In general

Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

(2) Income or loss from passive loss limitation activities

For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

(3) Income or loss from other activities

(A) In general

For purposes of this chapter, any partner's distributive share of any income or loss de-

scribed in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

(B) Deductions for loss not subject to section 67

The deduction under section 212 for any loss described in subparagraph (A) shall not be treated as a miscellaneous itemized deduction for purposes of section 67.

(4) Treatment of net capital gain or loss

For purposes of this chapter, any partner's distributive share of any gain or loss described in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

(5) Minimum tax treatment

In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

(6) General credits

A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

(d) Operating rules

For purposes of this section—

(1) Passive loss limitation activity

The term ''passive loss limitation activity'' means—

(A) any activity which involves the conduct of a trade or business, and

(B) any rental activity.

For purposes of the preceding sentence, the term ''trade or business'' includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

(2) Tax-exempt interest

The term ''tax-exempt interest'' means interest excludable from gross income under section 103.

(3) Applicable net AMT adjustment

(A) In general

The applicable net AMT adjustment is—

(i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and

(ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

(B) Net adjustment

The term ''net adjustment'' means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

(4) Treatment of certain separately stated items

(A) Exclusion for certain purposes

In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be), and any item referred to in subsection (a)(11), shall be excluded.

(B) Allocation rules

The net capital gain shall be treated—

(i) as allocable to passive loss limitation activities to the extent the net capital gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

(ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

(C) Net capital loss

The term ''net capital loss'' means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

(5) General credits

The term ''general credits'' means any credit other than the low-income housing credit, the rehabilitation credit, and the foreign tax credit.

(6) Foreign income taxes

The term ''foreign income taxes'' means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

(e) Special rule for unrelated business tax

In the case of a partner which is an organization subject to tax under section 511, such partner's distributive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

(f) Special rules for applying passive loss limitations

If any person holds an interest in an electing large partnership other than as a limited partner—

(1) paragraph (2) of subsection (c) shall not apply to such partner, and

(2) such partner's distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1002; amended Pub. L. 109–58, title XIII, § 1322(a)(3)(I), (J), Aug. 8, 2005, 119 Stat. 1012.)

AMENDMENTS

2005—Subsec. (a)(9) to (11). Pub. L. 109–58, § 1322(a)(3)(I), inserted ''and'' at end of par. (9), redesig-

nated par. (11) as (10), and struck out former par. (10) which read as follows: ''the credit allowable under section 29, and''.

Subsec. (d)(5). Pub. L. 109–58, § 1322(a)(3)(J), substituted ''and the foreign tax credit'' for ''the foreign tax credit, and the credit allowable under section 29''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109–58, set out as a note under section 45K of this title.

§ 773. Computations at partnership level

(a) General rule

(1) Taxable income

The taxable income of an electing large partnership shall be computed in the same manner as in the case of an individual except that—

(A) the items described in section 772(a) shall be separately stated, and

(B) the modifications of subsection (b) shall apply.

(2) Elections

All elections affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be made by the partnership; except that the election under section 901, and any election under section 108, shall be made by each partner separately.

(3) Limitations, etc.

(A) In general

Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be applied at the partnership level (and not at the partner level).

(B) Certain limitations applied at partner level

The following provisions shall be applied at the partner level (and not at the partnership level):

(i) Section 68 (relating to overall limitation on itemized deductions).

(ii) Sections 49 and 465 (relating to at risk limitations).

(iii) Section 469 (relating to limitation on passive activity losses and credits).

(iv) Any other provision specified in regulations.

(4) Coordination with other provisions

Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

(b) Modifications to determination of taxable income

In determining the taxable income of an electing large partnership—

(1) Certain deductions not allowed

The following deductions shall not be allowed:

(A) The deduction for personal exemptions provided in section 151.

(B) The net operating loss deduction provided in section 172.

(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

(2) Charitable deductions

In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

(3) Coordination with section 67

In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

(c) Special rules for income from discharge of indebtedness

If an electing large partnership has income from the discharge of any indebtedness—

(1) such income shall be excluded in determining the amounts referred to in section 772(a), and

(2) in determining the income tax of any partner of such partnership—

(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and

(B) the provisions of section 108 shall be applied without regard to this part.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1004.)

§ 774. Other modifications

(a) Treatment of certain optional adjustments, etc.

In the case of an electing large partnership—

(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

(2) a partner's distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

(b) Credit recapture determined at partnership level

(1) In general

In the case of an electing large partnership—

(A) any credit recapture shall be taken into account by the partnership, and

(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

(2) Method of taking recapture into account

An electing large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

(3) Dispositions not to trigger recapture

No credit recapture shall be required by reason of any transfer of an interest in an electing large partnership.

(4) Credit recapture

For purposes of this subsection, the term ''credit recapture'' means any increase in tax under section 42(j) or 50(a).

(c) Partnership not terminated by reason of change in ownership

Subparagraph (B) of section 708(b)(1) shall not apply to an electing large partnership.

(d) Partnership entitled to certain credits

The following shall be allowed to an electing large partnership and shall not be taken into account by the partners of such partnership:

(1) The credit provided by section 34.

(2) Any credit or refund under section 852(b)(3)(D) or 857(b)(3)(D).

(e) Treatment of REMIC residuals

For purposes of applying section 860E(e)(6) to any electing large partnership—

(1) all interests in such partnership shall be treated as held by disqualified organizations,

(2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and

(3) subparagraph (D) of section 860E(e)(6) shall not apply.

(f) Special rules for applying certain installment sale rules

In the case of an electing large partnership—

(1) the provisions of sections 453(*l*)(3) and 453A shall be applied at the partnership level, and

(2) in determining the amount of interest payable under such sections, such partnership shall be treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1005; amended Pub. L. 105–206, title VI, § 6012(c), July 22, 1998, 112 Stat. 819.)

AMENDMENTS

1998—Subsec. (d)(2). Pub. L. 105–206 inserted ''or 857(b)(3)(D)'' before period at end.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

§ 775. Electing large partnership defined

(a) General rule

For purposes of this part—

(1) In general

The term ''electing large partnership'' means, with respect to any partnership taxable year, any partnership if—

(A) the number of persons who were partners in such partnership in the preceding partnership taxable year equaled or exceeded 100, and

(B) such partnership elects the application of this part.

To the extent provided in regulations, a partnership shall cease to be treated as an electing large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

(2) Election

The election under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(b) Special rules for certain service partnerships

(1) Certain partners not counted

For purposes of this section, the term ''partner'' does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

(2) Exclusion

For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership if substantially all the partners of such partnership—

(A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,

(B) are retired partners who had performed such substantial services, or

(C) are spouses of partners who are performing (or had previously performed) such substantial services.

(3) Special rule for lower tier partnerships

For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the partnership owns directly an interest in the capital and profits of at least 80 percent.

(c) Exclusion of commodity pools

For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(a)(1)), or options, futures, or forwards with respect to such commodities.

(d) Secretary may rely on treatment on return

If, on the partnership return of any partnership, such partnership is treated as an electing large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1006; amended Pub. L. 106–170, title V, § 532(c)(2)(G), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any trans-

action entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

§ 776. Special rules for partnerships holding oil and gas properties

(a) Computation of percentage depletion

In the case of an electing large partnership, except as provided in subsection (b)—

(1) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

(2) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for which percentage depletion is allowable and without regard to paragraph (1) of section 613A(d), and

(3) paragraph (3) of section 705(a) shall not apply.

(b) Treatment of certain partners

(1) In general

In the case of a disqualified person, the treatment under this chapter of such person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person's distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

(2) Disqualified person

For purposes of paragraph (1), the term ''disqualified person'' means, with respect to any partnership taxable year—

(A) any person referred to in paragraph (2) or (4) of section 613A(d) for such person's taxable year in which such partnership taxable year ends, and

(B) any other person if such person's average daily production of domestic crude oil and natural gas for such person's taxable year in which such partnership taxable year ends exceeds 500 barrels.

(3) Average daily production

For purposes of paragraph (2), a person's average daily production of domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

(A) by taking into account all production of domestic crude oil and natural gas (including such person's proportionate share of any production of a partnership),

(B) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

(C) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1007.)

§ 777. Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this part.

(Added Pub. L. 105–34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1008.)

Subchapter L—Insurance Companies

Part

I. Life insurance companies.

II. Other insurance companies.

III. Provisions of general application.

AMENDMENTS

1988—Pub. L. 100–647, title I, § 1018(u)(32), Nov. 10, 1988, 102 Stat. 3592, redesignated parts III and IV as II and III, respectively, and struck out former Part II ''Mutual insurance companies (other than life and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies of premium deposits).''

1962—Pub. L. 87–834, § 8(g)(4)(A), Oct. 16, 1962, 76 Stat. 999, substituted ''and certain marine insurance companies and other than fire or flood insurance companies which operate on basis of perpetual policies or premium deposits'' for ''or marine or fire insurance companies issuing perpetual policies'' in heading of part II.

PART I—LIFE INSURANCE COMPANIES

Subpart

A. Tax imposed.

B. Life insurance gross income.

C. Life insurance deductions.

D. Accounting, allocation, and foreign provisions.

E. Definitions and special rules.

SUBPART A—TAX IMPOSED

Sec.

801. Tax imposed.

§ 801. Tax imposed

(a) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

(2) Alternative tax in case of capital gains

(A) In general

If a life insurance company has a net capital gain for the taxable year, then (in lieu of the tax imposed by paragraph (1)), there is hereby imposed a tax (if such tax is less than the tax imposed by paragraph (1)).

(B) Amount of tax

The amount of the tax imposed by this paragraph shall be the sum of—

(i) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income reduced by the amount of the net capital gain, and

(ii) an amount determined as provided in section 1201(a) on such net capital gain.

(C) Net capital gain not taken into account in determining small life insurance company deduction

For purposes of subparagraph (B)(i), the amount allowable as a deduction under paragraph (2) of section 804 shall be determined