

§ 1.514(c)-2

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for unencumbered property is an *annuity amount* or a *unitrust amount* (as defined in § 1.664-1(a)(1)(iii)(b) and (c)).

[T.D. 7229, 37 FR 28151, Dec. 21, 1972; 38 FR 21918, Aug. 14, 1973; T.D. 7698, 45 FR 33973, May 21, 1980]

§ 1.514(c)-2 Permitted allocations under section 514(c)(9)(E).

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(b) *Application of section 514(c)(9)(E), relating to debt-financed real property held by partnerships—(1) In general.* This § 1.514(c)-2 provides rules governing the application of section 514(c)(9)(E). To comply with section 514(c)(9)(E), the following two requirements must be met:

(i) *The fractions rule.* The allocation of items to a partner that is a qualified organization cannot result in that partner having a percentage share of overall partnership income for any partnership taxable year greater than that partner's fractions rule percentage (as defined in paragraph (c)(2) of this section).

(ii) *Substantial economic effect.* Each partnership allocation must have substantial economic effect. However, allocations that cannot have economic effect must be deemed to be in accordance with the partners' interests in the partnership pursuant to § 1.704-1(b)(4),

or (if § 1.704-1(b)(4) does not provide a method for deeming the allocations to be in accordance with the partners' interests in the partnership) must otherwise comply with the requirements of § 1.704-1(b)(4). Allocations attributable to nonrecourse liabilities or partner nonrecourse debt must comply with the requirements of § 1.704-2(e) or § 1.704-2(i).

(2) *Manner in which fractions rule is applied*—(i) *In general.* A partnership must satisfy the fractions rule both on a prospective basis and on an actual basis for each taxable year of the partnership, commencing with the first taxable year of the partnership in which the partnership holds debt-financed real property and has a qualified organization as a partner. Generally, a partnership does not qualify for the unrelated business income tax exception provided by section 514(c)(9)(A) for any taxable year of its existence unless it satisfies the fractions rule for every year the fractions rule applies. However, if an actual allocation described in paragraph (e)(4), (h), (j)(2), or (m)(1)(ii) of this section (regarding certain allocations that are disregarded or not taken into account for purposes of the fractions rule until an actual allocation is made) causes the partnership to violate the fractions rule, the partnership ordinarily is treated as violating the fractions rule only for the taxable year of the actual allocation and subsequent taxable years. For purposes of applying the fractions rule, the term *partnership agreement* is defined in accordance with § 1.704-1(b)(2)(ii)(h), and informal understandings are considered part of the partnership agreement in appropriate circumstances. See paragraph (k) of this section for rules relating to changes in the partners' interests and *de minimis* exceptions to the fractions rule.

(ii) *Subsequent changes.* A subsequent change to a partnership agreement that causes the partnership to violate the fractions rule ordinarily causes the partnership's income to fail the exception provided by section 514(c)(9)(A) only for the taxable year of the change and subsequent taxable years.

(c) *General definitions*—(1) *Overall partnership income and loss.* Overall

partnership income is the amount by which the aggregate items of partnership income and gain for the taxable year exceed the aggregate items of partnership loss and deduction for the year. Overall partnership loss is the amount by which the aggregate items of partnership loss and deduction for the taxable year exceed the aggregate items of partnership income and gain for the year.

(i) *Items taken into account in determining overall partnership income and loss.* Except as otherwise provided in this section, the partnership items that are included in computing overall partnership income or loss are those items of income, gain, loss, and deduction (including expenditures described in section 705(a)(2)(B)) that increase or decrease the partners' capital accounts under § 1.704-1(b)(2)(iv). Tax items allocable pursuant to section 704(c) or § 1.704-1(b)(2)(iv)(f)(4) are not included in computing overall partnership income or loss. Nonetheless, allocations pursuant to section 704(c) or § 1.704-1(b)(2)(iv)(f)(4) may be relevant in determining that this section is being applied in a manner that is inconsistent with the fractions rule. See paragraph (k)(4) of this section.

(ii) *Guaranteed payments to qualified organizations.* Except to the extent otherwise provided in paragraph (d) of this section—

(A) A guaranteed payment to a qualified organization is not treated as an item of partnership loss or deduction in computing overall partnership income or loss; and

(B) Income that a qualified organization may receive or accrue with respect to a guaranteed payment is treated as an allocable share of overall partnership income or loss for purposes of the fractions rule.

(2) *Fractions rule percentage.* A qualified organization's fractions rule percentage is that partner's percentage share of overall partnership loss for the partnership taxable year for which that partner's percentage share of overall partnership loss will be the smallest.

(3) *Definitions of certain terms by cross reference to partnership regulations.* *Minimum gain chargeback, nonrecourse deduction, nonrecourse liability, partner nonrecourse debt, partner nonrecourse*

debt minimum gain, partner nonrecourse debt minimum gain chargeback, partner nonrecourse deduction, and partnership minimum gain have the meanings provided in § 1.704-2.

(4) *Example.* The following example illustrates the provisions of this paragraph (c).

Example. Computation of overall partnership income and loss for a taxable year. (i) Taxable corporation TP and qualified organization QO form a partnership to own and operate encumbered real property. Under the partnership agreement, all items of income, gain, loss, deduction, and credit are allocated 50 percent to TP and 50 percent to QO. Neither partner is entitled to a preferred return. However, the partnership agreement provides for a \$900 guaranteed payment for services to QO in each of the partnership's first two taxable years. No part of the guaranteed payments qualify as a reasonable guaranteed payment under paragraph (d) of this section.

(ii) The partnership violates the fractions rule. Due to the existence of the guaranteed payment, QO's percentage share of any overall partnership income in the first two years will exceed QO's fractions rule percentage. For example, the partnership might have bottom-line net income of \$5,100 in its first taxable year that is comprised of \$10,000 of rental income, \$4,000 of salary expense, and the \$900 guaranteed payment to QO. The guaranteed payment would not be treated as an item of deduction in computing overall partnership income or loss because it does not qualify as a reasonable guaranteed payment. See paragraph (c)(1)(ii)(A) of this section. Accordingly, overall partnership income for the year would be \$6,000, which would consist of \$10,000 of rental income less \$4,000 of salary expense. See paragraph (c)(1)(i) of this section. The \$900 QO would include in income with respect to the guaranteed payment would be treated as an allocable share of the \$6,000 of overall partnership income. See paragraph (c)(1)(ii)(B) of this section. Therefore, QO's allocable share of the overall partnership income for the year would be \$3,450, which would be comprised of the \$900 of income pertaining to QO's guaranteed payment, plus QO's \$2,550 allocable share of the partnership's net income for the year (50 percent of \$5,100). QO's \$3,450 allocable share of overall partnership income would equal 58 percent of the \$6,000 of overall partnership income and would exceed QO's fractions rule percentage, which is less than 50 percent. (If there were no guaranteed payment, QO's fractions rule percentage would be 50 percent. However, the existence of the guaranteed payment to QO that is not disregarded for purposes of the fractions rule pursuant to paragraph (d) of this section

means that QO's fractions rule percentage is less than 50 percent.)

(d) *Exclusion of reasonable preferred returns and guaranteed payments—(1) Overview.* This paragraph (d) sets forth requirements for disregarding reasonable preferred returns for capital and reasonable guaranteed payments for capital or services for purposes of the fractions rule. To qualify, the preferred return or guaranteed payment must be set forth in a binding, written partnership agreement.

(2) *Preferred returns.* Items of income (including gross income) and gain that may be allocated to a partner with respect to a current or cumulative reasonable preferred return for capital (including allocations of minimum gain attributable to nonrecourse liability (or partner nonrecourse debt) proceeds distributed to the partner as a reasonable preferred return) are disregarded in computing overall partnership income or loss for purposes of the fractions rule. Similarly, if a partnership agreement effects a reasonable preferred return with an allocation of what would otherwise be overall partnership income, those items comprising that allocation are disregarded in computing overall partnership income for purposes of the fractions rule.

(3) *Guaranteed payments.* A current or cumulative reasonable guaranteed payment to a qualified organization for capital or services is treated as an item of deduction in computing overall partnership income or loss, and the income that the qualified organization may receive or accrue from the current or cumulative reasonable guaranteed payment is not treated as an allocable share of overall partnership income or loss. The treatment of a guaranteed payment as reasonable for purposes of section 514(c)(9)(E) does not affect its possible characterization as unrelated business taxable income under other provisions of the Internal Revenue Code.

(4) *Reasonable amount—(i) In general.* A guaranteed payment for services is reasonable only to the extent the amount of the payment is reasonable under § 1.162-7 (relating to the deduction of compensation for personal services). A preferred return or guaranteed payment for capital is reasonable only

to the extent it is computed, with respect to unreturned capital, at a rate that is commercially reasonable based on the relevant facts and circumstances.

(ii) *Safe harbor.* For purposes of this paragraph (d)(4), a rate is deemed to be commercially reasonable if it is no greater than four percentage points more than, or if it is no greater than 150 percent of, the highest long-term applicable federal rate (AFR) within the meaning of section 1274(d), for the month the partner's right to a preferred return or guaranteed payment is first established or for any month in the partnership taxable year for which the return or payment on capital is computed. A rate in excess of the rates described in the preceding sentence may be commercially reasonable, based on the relevant facts and circumstances.

(5) *Unreturned capital*—(i) *In general.* Unreturned capital is computed on a weighted-average basis and equals the excess of—

(A) The amount of money and the fair market value of property contributed by the partner to the partnership (net of liabilities assumed, or taken subject to, by the partnership); over

(B) The amount of money and the fair market value of property (net of liabilities assumed, or taken subject to, by the partner) distributed by the partnership to the partner as a return of capital.

(ii) *Return of capital.* In determining whether a distribution constitutes a return of capital, all relevant facts and circumstances are taken into account. However, the designation of distributions in a written partnership agreement generally will be respected in determining whether a distribution constitutes a return of capital, so long as the designation is economically reasonable.

(6) *Timing rules*—(i) *Limitation on allocations of income with respect to reasonable preferred returns for capital.* Items of income and gain (or part of what would otherwise be overall partnership income) that may be allocated to a partner in a taxable year with respect to a reasonable preferred return for capital are disregarded for purposes of

the fractions rule only to the extent the allocable amount will not exceed—

(A) The aggregate of the amount that has been distributed to the partner as a reasonable preferred return for the taxable year of the allocation and prior taxable years, on or before the due date (not including extensions) for filing the partnership's return for the taxable year of the allocation; minus

(B) The aggregate amount of corresponding income and gain (and what would otherwise be overall partnership income) allocated to the partner in all prior years.

(ii) *Reasonable guaranteed payments may be deducted only when paid in cash.*

If a partnership that avails itself of paragraph (d)(3) of this section would otherwise be required (by virtue of its method of accounting) to deduct a reasonable guaranteed payment to a qualified organization earlier than the taxable year in which it is paid in cash, the partnership must delay the deduction of the guaranteed payment until the taxable year it is paid in cash. For purposes of this paragraph (d)(6)(ii), a guaranteed payment that is paid in cash on or before the due date (not including extensions) for filing the partnership's return for a taxable year may be treated as paid in that prior taxable year.

(7) *Examples.* The following examples illustrate the provisions of this paragraph (d).

Facts. Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$9,000 to the partnership and TP contributes \$1,000. The partnership borrows \$50,000 from a third party lender and purchases an office building for \$55,000. At all relevant times the safe harbor rate described in paragraph (d)(4)(ii) of this section equals 10 percent.

Example 1. Allocations made with respect to preferred returns. (1) The partnership agreement provides that in each taxable year the partnership's *distributable cash* is first to be distributed to QO as a 10 percent preferred return on its unreturned capital. To the extent the partnership has insufficient cash to pay QO its preferred return in any taxable year, the preferred return is compounded (at 10 percent) and is to be paid in future years to the extent the partnership has distributable cash. The partnership agreement first allocates gross income and gain 100 percent

to QO, to the extent cash has been distributed to QO as a preferred return. All remaining profit or loss is allocated 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. Items of income and gain that may be specially allocated to QO with respect to its preferred return are disregarded in computing overall partnership income or loss for purposes of the fractions rule because the requirements of paragraph (d) of this section are satisfied. After disregarding those allocations, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and under the partnership agreement QO may not be allocated more than 50 percent of overall partnership income in any taxable year.

(iii) The facts are the same as in paragraph (i) of this *Example 1*, except that QO's preferred return is computed on unreturned capital at a rate that exceeds a commercially reasonable rate. The partnership violates the fractions rule. The income and gain that may be specially allocated to QO with respect to the preferred return is not disregarded in computing overall partnership income or loss to the extent it exceeds a commercially reasonable rate. See paragraph (d) of this section. As a result, QO's fractions rule percentage is less than 50 percent (see paragraph (c)(2) of this section), and allocations of income and gain to QO with respect to its preferred return could result in QO being allocated more than 50 percent of the overall partnership income in a taxable year.

Example 2. Guaranteed payments and the computation of overall partnership income or loss. (i) The partnership agreement allocates all bottom-line partnership income and loss 50 percent to QO and 50 percent to TP throughout the life of the partnership. The partnership agreement provides that QO is entitled each year to a 10 percent guaranteed payment on unreturned capital. To the extent the partnership is unable to make a guaranteed payment in any taxable year, the unpaid amount is compounded at 10 percent and is to be paid in future years.

(ii) Assuming the requirements of paragraph (d)(6)(ii) of this section are met, the partnership satisfies the fractions rule. The guaranteed payment is disregarded for purposes of the fractions rule because it is computed with respect to unreturned capital at the safe harbor rate described in paragraph (d)(4)(ii) of this section. Therefore, the guaranteed payment is treated as an item of deduction in computing overall partnership income or loss, and the corresponding income that QO may receive or accrue with respect to the guaranteed payment is not treated as an allocable share of overall partnership income or loss. See paragraph (d)(3) of this section. Accordingly, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and under the partnership

agreement QO may not be allocated more than 50 percent of overall partnership income in any taxable year.

(e) *Chargebacks and offsets*—(1) *In general.* The following allocations are disregarded in computing overall partnership income or loss for purposes of the fractions rule—

(i) Allocations of what would otherwise be overall partnership income that may be made to chargeback (i.e., reverse) prior disproportionately large allocations of overall partnership loss (or part of the overall partnership loss) to a qualified organization, and allocations of what would otherwise be overall partnership loss that may be made to chargeback prior disproportionately small allocations of overall partnership income (or part of the overall partnership income) to a qualified organization;

(ii) Allocations of income or gain that may be made to a partner pursuant to a minimum gain chargeback attributable to prior allocations of nonrecourse deductions to the partner;

(iii) Allocations of income or gain that may be made to a partner pursuant to a minimum gain chargeback attributable to prior allocations of partner nonrecourse deductions to the partner and allocations of income or gain that may be made to other partners to chargeback compensating allocations of other losses, deductions, or section 705(a)(2)(B) expenditures to the other partners; and

(iv) Allocations of items of income or gain that may be made to a partner pursuant to a qualified income offset, within the meaning of § 1.704-1(b)(2)(ii)(d).

(v) Allocations made in taxable years beginning on or after January 1, 2002, that are mandated by statute or regulation other than subchapter K of chapter 1 of the Internal Revenue Code and the regulations thereunder.

(2) *Disproportionate allocations*—(i) *In general.* To qualify under paragraph (e)(1)(i) of this section, prior disproportionate allocations may be reversed in full or in part, and in any order, but must be reversed in the same ratio as originally made. A prior allocation is disproportionately large if the qualified organization's percentage share of that allocation exceeds its fractions

rule percentage. A prior allocation is disproportionately small if the qualified organization's percentage share of that allocation is less than its fractions rule percentage. However, a prior allocation (or allocations) is not considered disproportionate unless the balance of the overall partnership income or loss for the taxable year of the allocation is allocated in a manner that would independently satisfy the fractions rule.

(ii) *Limitation on chargebacks of partial allocations.* Except in the case of a chargeback allocation pursuant to paragraph (e)(4) of this section, and except as otherwise provided by the Internal Revenue Service by revenue ruling, revenue procedure, or, on a case-by-case basis, by letter ruling, paragraph (e)(1)(i) of this section applies to a chargeback of an allocation of part of the overall partnership income or loss only if that part consists of a pro rata portion of each item of partnership income, gain, loss, and deduction (other than nonrecourse deductions, as well as partner nonrecourse deductions and compensating allocations) that is included in computing overall partnership income or loss.

(3) *Minimum gain chargebacks attributable to nonrecourse deductions.* Commencing with the first taxable year of the partnership in which a minimum gain chargeback (or partner nonrecourse debt minimum gain chargeback) occurs, a chargeback to a partner is attributable to nonrecourse deductions (or separately, on a debt-by-debt basis, to partner nonrecourse deductions) in the same proportion that the partner's percentage share of the partnership minimum gain (or separately, on a debt-by-debt basis, the partner nonrecourse debt minimum gain) at the end of the immediately preceding taxable year is attributable to nonrecourse deductions (or partner nonrecoursedeductions). The partnership must determine the extent to which a partner's percentage share of the partnership minimum gain (or partner nonrecourse debt minimum gain) is attributable to deductions in a reasonable and consistent manner. For example, in those cases in which none of the exceptions contained in §1.704-2(f) (2) through (5) are relevant, a part-

ner's percentage share of the partnership minimum gain generally is attributable to nonrecourse deductions in the same ratio that—

(i) The aggregate amount of the nonrecourse deductions previously allocated to the partner but not charged back in prior taxable years; bears to

(ii) The sum of the amount described in paragraph (e)(3)(i) of this section, plus the aggregate amount of distributions previously made to the partner of proceeds of a nonrecourse liability allocable to an increase in partnership minimum gain but not charged back in prior taxable years.

(4) *Minimum gain chargebacks attributable to distribution of nonrecourse debt proceeds—*(i) *Chargebacks disregarded until allocations made.* Allocations of items of income and gain that may be made pursuant to a provision in the partnership agreement that charges back minimum gain attributable to the distribution of proceeds of a nonrecourse liability (or a partner nonrecourse debt) are taken into account for purposes of the fractions rule only to the extent an allocation is made. (See paragraph (d)(2) of this section, pursuant to which there is permanently excluded chargeback allocations of minimum gain that are attributable to proceeds distributed as a reasonable preferred return.)

(ii) *Certain minimum gain chargebacks related to returns of capital.* Allocations of items of income or gain that (in accordance with §1.704-2(f)(1)) may be made to a partner pursuant to a minimum gain chargeback attributable to the distribution of proceeds of a nonrecourse liability are disregarded in computing overall partnership income or loss for purposes of the fractions rule to the extent that the allocations (subject to the requirements of paragraph (e)(2) of this section) also charge back prior disproportionately large allocations of overall partnership loss (or part of the overall partnership loss) to a qualified organization. This exception applies only to the extent the disproportionately large allocation consisted of depreciation from real property (other than items of nonrecourse deduction or partner nonrecourse deduction) that subsequently was used to

secure the nonrecourse liability providing the distributed proceeds, and only if those proceeds were distributed as a return of capital and in the same proportion as the disproportionately large allocation.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (e).

Example 1. Chargebacks of disproportionately large allocations of overall partnership loss. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$900 to the partnership and TP contributes \$100. The partnership agreement allocates overall partnership loss 50 percent to QO and 50 percent to TP until TP's capital account is reduced to zero; then 100 percent to QO until QO's capital account is reduced to zero; and thereafter 50 percent to QO and 50 percent to TP. *Overall partnership income* is allocated first 100 percent to QO to chargeback overall partnership loss allocated 100 percent to QO, and thereafter 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. QO's fractions rule percentage is 50 percent. See paragraph (c)(2) of this section. Therefore, the 100 percent allocation of overall partnership loss to QO is disproportionately large. See paragraph (e)(2)(i) of this section. Accordingly, the 100 percent allocation to QO of what would otherwise be overall partnership income (if it were not disregarded), which charges back the disproportionately large allocation of overall partnership loss, is disregarded in computing overall partnership income and loss for purposes of the fractions rule. The 100 percent allocation is in the same ratio as the disproportionately large loss allocation, and the rest of the allocations for the taxable year of the disproportionately large loss allocation will independently satisfy the fractions rule. See paragraph (e)(2)(i) of this section. After disregarding the chargeback allocation of 100 percent of what would otherwise be overall partnership income, QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

Example 2. Chargebacks of disproportionately small allocations of overall partnership income. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$900 to the partnership and TP contributes \$100. The partnership purchases real property with money contributed by its partners and with money borrowed by the partnership on a recourse basis. In any year, the partnership agreement allocates the first \$500 of overall partnership income 50 percent to QO and 50 percent to TP; the next \$100 of overall partnership income 100 percent to TP (as an incentive for TP to achieve significant

profitability in managing the partnership's operations); and all remaining overall partnership income 50 percent to QO and 50 percent to TP. *Overall partnership loss* is allocated first 100 percent to TP to chargeback overall partnership income allocated 100 percent to TP at any time in the prior three years and not reversed; and thereafter 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. QO's fractions rule percentage is 50 percent because qualifying chargebacks are disregarded pursuant to paragraph (e)(1)(i) in computing overall partnership income or loss. See paragraph (c)(2) of this section. The zero percent allocation to QO of what would otherwise be overall partnership loss is a qualifying chargeback that is disregarded because it is in the same ratio as the income allocation it charges back, because the rest of the allocations for the taxable year of that income allocation will independently satisfy the fractions rule (see paragraph (e)(2)(i) of this section), and because it charges back an allocation of zero overall partnership income to QO, which is proportionately smaller (i.e., disproportionately small) than QO's 50 percent fractions rule percentage. After disregarding the chargeback allocation of 100 percent of what would otherwise be overall partnership loss, QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

Example 3. Chargebacks of partner nonrecourse deductions and compensating allocations of other items. (i) Qualified organization QO and taxable corporation TP form a partnership to own and operate encumbered real property. QO and TP each contribute \$500 to the partnership. In addition, QO makes a \$300 nonrecourse loan to the partnership. The partnership agreement contains a partner nonrecourse debt minimum gain chargeback provision and a provision that allocates partner nonrecourse deductions to the partner who bears the economic burden of the deductions in accordance with § 1.704-2. The partnership agreement also provides that to the extent partner nonrecourse deductions are allocated to QO in any taxable year, other compensating items of partnership loss or deduction (and, if appropriate, section 705(a)(2)(B) expenditures) will first be allocated 100 percent to TP. In addition, to the extent items of income or gain are allocated to QO in any taxable year pursuant to a partner nonrecourse debt minimum gain chargeback of deductions, items of partnership income and gain will first be allocated 100 percent to TP. The partnership agreement allocates all other overall partnership income or loss 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule on a prospective basis. The allocations of the partner nonrecourse deductions and the compensating allocation of other items of loss, deduction, and expenditure that may be made to TP (but which will not be made unless there is an allocation of partner nonrecourse deductions to QO) are not taken into account for purposes of the fractions rule until a taxable year in which an allocation is made. See paragraph (j)(1) of this section. In addition, partner nonrecourse debt minimum gain chargebacks of deductions and allocations of income or gain to other partners that chargeback compensating allocations of other deductions are disregarded in computing overall partnership income or loss for purposes of the fractions rule. See paragraph (e)(1)(iii) of this section. Since all other overall partnership income and loss is allocated 50 percent to QO and 50 percent to TP, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

(iii) The facts are the same as in paragraph (i) of this *Example 3*, except that the partnership agreement provides that compensating allocations of loss or deduction (and section 705(a)(2)(B) expenditures) to TP will not be charged back until year 10. The partners expect \$300 of partner nonrecourse deductions to be allocated to QO in year 1 and \$300 of income or gain to be allocated to QO in year 2 pursuant to the partner nonrecourse debt minimum gain chargeback provision.

(iv) The partnership fails to satisfy the fractions rule on a prospective basis under the anti-abuse rule of paragraph (k)(4) of this section. If the partners' expectations prove correct, at the end of year 2, QO will have been allocated \$300 of partner nonrecourse deductions and an offsetting \$300 of partner nonrecourse debt minimum gain. However, the \$300 of compensating deductions and losses that may be allocated to TP will not be charged back until year 10. Thus, during the period beginning at the end of year 2 and ending eight years later, there may be \$300 more of unreversed deductions and losses allocated to TP than to QO, which would be inconsistent with the purpose of the fractions rule.

Example 4. Minimum gain chargeback attributable to distributions of nonrecourse debt proceeds. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$900 to the partnership and TP contributes \$100. The partnership agreement generally allocates overall partnership income and loss 90 percent to QO and 10 percent to TP. However, the partnership agreement contains a minimum gain chargeback provision, and also provides that in any partnership taxable year in which there is a

chargeback of partnership minimum gain to QO attributable to distributions of proceeds of nonrecourse liabilities, all other items comprising overall partnership income or loss will be allocated in a manner such that QO is not allocated more than 90 percent of the overall partnership income for the year.

(ii) The partnership satisfies the fractions rule on a prospective basis. QO's fractions rule percentage is 90 percent. See paragraph (c)(2) of this section. The chargeback that may be made to QO of minimum gain attributable to distributions of nonrecourse liability proceeds is taken into account for purposes of the fractions rule only to the extent an allocation is made. See paragraph (e)(4) of this section. Accordingly, that potential allocation to QO is disregarded in applying the fractions rule on a prospective basis (see paragraph (b)(2) of this section), and QO is treated as not being allocated a percentage share of overall partnership income in excess of its fractions rule percentage in any taxable year. (Similarly, QO is treated as not being allocated items of income or gain in a taxable year when the partnership has an overall partnership loss.)

(iii) In year 3, the partnership borrows \$400 on a nonrecourse basis and distributes it to QO as a return of capital. In year 8, the partnership has \$400 of gross income and cash flow and \$300 of overall partnership income, and the partnership repays the \$400 nonrecourse borrowing.

(iv) The partnership violates the fractions rule for year 8 and all future years. Pursuant to the minimum gain chargeback provision, the entire \$400 of partnership gross income is allocated to QO. Accordingly, notwithstanding the curative provision in the partnership agreement that would allocate to TP the next \$44 ($(\$400 \div 9) \times 10\%$) of income and gain included in computing overall partnership income, the partnership has no other items of income and gain to allocate to QO. Because the \$400 of gross income actually allocated to QO is taken into account for purposes of the fractions rule in the year an allocation is made (see paragraph (e)(4) of this section), QO's percentage share of overall partnership income in year 8 is greater than 100 percent. Since this exceeds QO's fractions rule percentage (i.e., 90 percent), the partnership violates the fractions rule for year 8 and all subsequent taxable years. See paragraph (b)(2) of this section.

(f) *Exclusion of reasonable partner-specific items of deduction or loss.* Provided that the expenditures are allocated to the partners to whom they are attributable, the following partner-specific expenditures are disregarded in computing overall partnership income or loss for purposes of the fractions rule—

(1) Expenditures for additional record-keeping and accounting incurred in connection with the transfer of a partnership interest (including expenditures incurred in computing basis adjustments under section 743(b));

(2) Additional administrative costs that result from having a foreign partner;

(3) State and local taxes or expenditures relating to those taxes; and

(4) Expenditures designated by the Internal Revenue Service by revenue ruling or revenue procedure, or, on a case-by-case basis, by letter ruling. (See § 601.601(d)(2)(i)(b) of this chapter).

(g) *Exclusion of unlikely losses and deductions.* Unlikely losses or deductions (other than items of nonrecourse deduction) that may be specially allocated to partners that bear the economic burden of those losses or deductions are disregarded in computing overall partnership income or loss for purposes of the fractions rule, so long as a principal purpose of the allocation is not tax avoidance. To be excluded under this paragraph (g), a loss or deduction must have a low likelihood of occurring, taking into account all relevant facts, circumstances, and information available to the partners (including bona fide financial projections). The types of events that may give rise to unlikely losses or deductions, depending on the facts and circumstances, include tort and other third-party litigation that give rise to unforeseen liabilities in excess of reasonable insurance coverage; unanticipated labor strikes; unusual delays in securing required permits or licenses; abnormal weather conditions (considering the season and the job site); significant delays in leasing property due to an unanticipated severe economic downturn in the geographic area; unanticipated cost overruns; and the discovery of environmental conditions that require remediation. No inference is drawn as to whether a loss or deduction is unlikely from the fact that the partnership agreement includes a provision for allocating that loss or deduction.

(h) *Provisions preventing deficit capital account balances.* A provision in the partnership agreement that allocates items of loss or deduction away from a

qualified organization in instances where allocating those items to the qualified organization would cause or increase a deficit balance in its capital account that the qualified organization is not obligated to restore (within the meaning of § 1.704-1(b)(2)(i) (b) or (d)), is disregarded for purposes of the fractions rule in taxable years of the partnership in which no such allocations are made pursuant to the provision. However, this exception applies only if, at the time the provision becomes part of the partnership agreement, all relevant facts, circumstances, and information (including bona fide financial projections) available to the partners reasonably indicate that it is unlikely that an allocation will be made pursuant to the provision during the life of the partnership.

(i) [Reserved]

(j) *Exception for partner nonrecourse deductions*—(1) *Partner nonrecourse deductions disregarded until actually allocated.* Items of partner nonrecourse deduction that may be allocated to a partner pursuant to § 1.704-2, and compensating allocations of other items of loss, deduction, and section 705(a)(2)(B) expenditures that may be allocated to other partners, are not taken into account for purposes of the fractions rule until the taxable years in which they are allocated.

(2) *Disproportionate allocation of partner nonrecourse deductions to a qualified organization.* A violation of the fractions rule will be disregarded if it arises because an allocation of partner nonrecourse deductions to a qualified organization that is not motivated by tax avoidance reduces another qualified organization's fractions rule percentage below what it would have been absent the allocation of the partner nonrecourse deductions.

(k) *Special rules*—(1) *Changes in partnership allocations arising from a change in the partners' interests.* A qualified organization that acquires a partnership interest from another qualified organization is treated as a continuation of the prior qualified organization partner (to the extent of that acquired interest) for purposes of applying the fractions rule. Changes in partnership allocations that result from other transfers or shifts of partnership interests

will be closely scrutinized (to determine whether the transfer or shift stems from a prior agreement, understanding, or plan or could otherwise be expected given the structure of the transaction), but generally will be taken into account only in determining whether the partnership satisfies the fractions rule in the taxable year of the change and subsequent taxable years.

(2) *De minimis interest rule*—(i) *In general.* Section 514(c)(9)(B)(vi) does not apply to a partnership otherwise subject to that section if—

(A) Qualified organizations do not hold, in the aggregate, interests of greater than five percent in the capital or profits of the partnership; and

(B) Taxable partners own substantial interests in the partnership through which they participate in the partnership on substantially the same terms as the qualified organization partners.

(ii) *Example.* Partnership *PRS* has two types of limited partnership interests that participate in partnership profits and losses on different terms. Qualified organizations (QOs) only own one type of limited partnership interest and own no general partnership interests. In the aggregate, the QOs own less than five percent of the capital and profits of *PRS*. Taxable partners also own the same type of limited partnership interest that the QOs own. These limited partnership interests owned by the taxable partners are 30 percent of the capital and profits of *PRS*. Thirty percent is a substantial interest in the partnership. Therefore, *PRS* satisfies paragraph (k)(2) of this section and section 514(c)(9)(B)(vi) does not apply.

(3) *De minimis allocations disregarded.* A qualified organization's fractions rule percentage of the partnership's items of loss and deduction, other than nonrecourse and partner nonrecourse deductions, that are allocated away from the qualified organization and to other partners in any taxable year are treated as having been allocated to the qualified organization for purposes of the fractions rule if—

(i) The allocation was neither planned nor motivated by tax avoidance; and

(ii) The total amount of those items of partnership loss or deduction is less than both—

(A) One percent of the partnership's aggregate items of gross loss and deduction for the taxable year; and

(B) \$50,000.

(4) *Anti-abuse rule.* The purpose of the fractions rule is to prevent tax avoidance by limiting the permanent or temporary transfer of tax benefits from tax-exempt partners to taxable partners, whether by directing income or gain to tax-exempt partners, by directing losses, deductions, or credits to taxable partners, or by some other similar manner. This section may not be applied in a manner that is inconsistent with the purpose of the fractions rule.

(1) [Reserved]

(m) *Tiered partnerships*—(1) *In general.* If a qualified organization holds an indirect interest in real property through one or more tiers of partnerships (a chain), the fractions rule is satisfied only if—

(i) The avoidance of tax is not a principal purpose for using the tiered-ownership structure (investing in separate real properties through separate chains of partnerships so that section 514(c)(9)(E) is, effectively, applied on a property-by-property basis is not, in and of itself, a tax avoidance purpose); and

(ii) The relevant partnerships can demonstrate under any reasonable method that the relevant chains satisfy the requirements of paragraphs (b)(2) through (k) of this section. For purposes of applying § 1.704-2(k) under the independent chain approach described in Example 3 of paragraph (m)(2) of this section, allocations of items of income or gain that may be made pursuant to a provision in the partnership agreement that charges back minimum gain are taken into account for purposes of the fractions rule only to the extent an allocation is made.

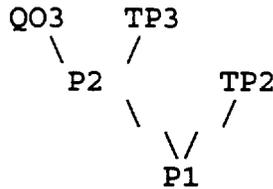
(2) *Examples.* The following examples illustrate the provisions of this paragraph (m).

Example 1. Tiered partnerships—collapsing approach. (i) Qualified organization QO3 and taxable individual TP3 form upper-tier partnership P2. The P2 partnership agreement allocates overall partnership income 20 percent to QO3 and 80 percent to TP3. Overall partnership loss is allocated 30 percent to

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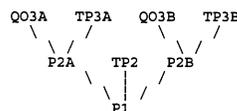
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QO3 and 70 percent to TP3. P2 and taxable individual TP2 form lower-tier partnership P1. The P1 partnership agreement allocates overall partnership income 60 percent to P2 and 40 percent to TP2. Overall partnership loss is allocated 40 percent to P2 and 60 percent to TP2. The only asset of P2 (which has no outstanding debt) is its interest in P1. P1 purchases real property with money contributed by its partners and with borrowed money. There is no tax avoidance purpose for the use of the tiered-ownership structure, which is illustrated by the following diagram.



(ii) P2 can demonstrate that the P2/P1 chain satisfies the requirements of paragraphs (b)(2) through (k) of this section by collapsing the tiered-partnership structure. On a collapsed basis, QO3's fractions rule percentage is 12 percent (30 percent of 40 percent). See paragraph (c)(2) of this section. P2 satisfies the fractions rule because QO3 may not be allocated more than 12 percent (20 percent of 60 percent) of overall partnership income in any taxable year.

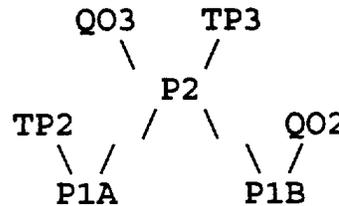
Example 2. Tiered partnerships—entity-by-entity approach. (i) Qualified organization QO3A is a partner with taxable individual TP3A in upper-tier partnership P2A. Qualified organization QO3B is a partner with taxable individual TP3B in upper-tier partnership P2B. P2A, P2B, and taxable individual TP2 are partners in lower-tier partnership P1, which owns encumbered real estate. None of QO3A, QO3B, TP3A, TP3B or TP2 has a direct or indirect ownership interest in each other. P2A has been established for the purpose of investing in numerous real estate properties independently of P2B and its partners. P2B has been established for the purpose of investing in numerous real estate properties independently of P2A and its partners. Neither P2A nor P2B has outstanding debt. There is no tax avoidance purpose for the use of the tiered-ownership structure, which is illustrated by the following diagram.



(ii) The P2A/P1 chain (Chain A) will satisfy the fractions rule if P1 and P2A can demonstrate in a reasonable manner that they

satisfy the requirements of paragraphs (b)(2) through (k) of this section. The P2B/P1 chain (Chain B) will satisfy the fractions rule if P1 and P2B can demonstrate in a reasonable manner that they satisfy the requirements of paragraphs (b)(2) through (k) of this section. To meet its burden, P1 treats P2A and P2B as qualified organizations. Provided that the allocations that may be made by P1 would satisfy the fractions rule if P2A and P2B were direct qualified organization partners in P1, Chain A will satisfy the fractions rule (for the benefit of QO3A) if the allocations that may be made by P2A satisfy the requirements of paragraphs (b)(2) through (k) of this section. Similarly, Chain B will satisfy the fractions rule (for the benefit of QO3B) if the allocations that may be made by P2B satisfy the requirements of paragraphs (b)(2) through (k) of this section. Under these facts, QO3A does not have to know how income and loss may be allocated by P2B, and QO3B does not have to know how income and loss may be allocated by P2A. QO3A's and QO3B's burden would not change even if TP2 were not a partner in P1.

Example 3. Tiered partnerships— independent chain approach. (i) Qualified organization QO3 and taxable corporation TP3 form upper-tier partnership P2. P2 and taxable corporation TP2 form lower-tier partnership P1A. P2 and qualified organization QO2 form lower-tier partnership P1B. P2 has no outstanding debt. P1A and P1B each purchase real property with money contributed by their respective partners and with borrowed money. Each partnership's real property is completely unrelated to the real property owned by the other partnership. P1B's allocations do not satisfy the requirements of paragraphs (b)(2) through (k) of this section because of allocations that may be made to QO2. However, if P2's interest in P1B were completely disregarded, the P2/P1A chain would satisfy the requirements of paragraphs (b)(2) through (k) of this section. There is no tax avoidance purpose for the use of the tiered-ownership structure, which is illustrated by the following diagram.



(ii) P2 satisfies the fractions rule with respect to the P2/P1A chain, but only if the P2 partnership agreement allocates those items allocated to P2 by P1A separately from those items allocated to P2 by P1B. For this purpose, allocations of items of income or gain

that may be made pursuant to a provision in the partnership agreement that charges back minimum gain, are taken into account for purposes of the fractions rule only to the extent an allocation is made. See paragraph (m)(1)(ii) of this section. P2 does not satisfy the fractions rule with respect to the P2/P1B chain.

(n) *Effective date*—(1) *In general.* Section 514(c)(9)(E), as amended by sections 2004(h) (1) and (2) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, applies generally with respect to property acquired by partnerships after October 13, 1987, and to partnership interests acquired after October 13, 1987.

(2) *General effective date of the regulations.* Section 1.514(c)-2 (a) through (m) applies with respect to partnership agreements entered into after December 30, 1992, property acquired by partnerships after December 30, 1992, and partnership interests acquired by qualified organizations after December 30, 1992 (other than a partnership interest that at all times after October 13, 1987, and prior to the acquisition was held by a qualified organization). For this purpose, paragraphs (a) through (m) of this section will be treated as satisfied with respect to partnership agreements entered into on or before May 13, 1994, property acquired by partnerships on or before May 13, 1994, and partnership interests acquired by qualified organizations on or before May 13, 1994, if the guidance set forth in (paragraphs (a) through (m) of § 1.514(c)-2 of) PS-56-90, published at 1993-5 I.R.B. 42, February 1, 1993, is satisfied. (See § 601.601(d)(2)(ii)(b) of this chapter).

(3) *Periods after June 24, 1990, and prior to December 30, 1992.* To satisfy the requirements of section 514(c)(9)(E) with respect to partnership agreements entered into after June 24, 1990, property acquired by partnerships after June 24, 1990, and partnership interests acquired by qualified organizations after June 24, 1990, (other than a partnership interest that at all times after October 13, 1987, and prior to the acquisition was held by a qualified organization) to which paragraph (n)(2) of this section does not apply, paragraphs (a) through (m) of this section must be satisfied as of the first day that section 514(c)(9)(E) applies with respect to the partnership,

property, or acquired interest. For this purpose, paragraphs (a) through (m) of this section will be treated as satisfied if the guidance in sections I through VI of Notice 90-41, 90-1 C.B. 350, (see § 601.601(d)(2)(ii)(b) of this chapter) has been followed.

(4) *Periods prior to the issuance of Notice 90-41.* With respect to partnerships commencing after October 13, 1987, property acquired by partnerships after October 13, 1987, and partnership interests acquired by qualified organizations after October 13, 1987, to which neither paragraph (n)(2) nor (n)(3) of this section applies, the Internal Revenue Service will not challenge an interpretation of section 514(c)(9)(E) that is reasonable in light of the underlying purposes of section 514(c)(9)(E) (as reflected in its legislative history) and that is consistently applied as of the first day that section 514(c)(9)(E) applies with respect to the partnership, property, or acquired interest. A reasonable interpretation includes an interpretation that substantially follows the guidance in either sections I through VI of Notice 90-41, (see § 601.601(d)(2)(ii)(b) of this chapter) or paragraphs (a) through (m) of this section.

(5) *Material modifications to partnership agreements.* A material modification will cause a partnership agreement to be treated as a new partnership agreement in appropriate circumstances for purposes of this paragraph (n).

[T.D. 8539, 59 FR 24928, May 13, 1994, as amended by T.D. 9047, 68 FR 12825, Mar. 18, 2003]

§ 1.514(d)-1 Basis of debt-financed property acquired in corporate liquidation.

(a) If debt-financed property is acquired by an exempt organization in a complete or partial liquidation of a corporation in exchange for its stock, the organization's basis in such property shall be the same as it would be in the hands of the transferor corporation, increased by the amount of gain recognized to the transferor corporation upon such distribution and by the amount of any gain which is includible, on account of such distribution, in the