

interests in partnership DE; and, immediately thereafter, partnership ABCDE will be treated as distributing interests in partnership DE to D and E in liquidation of their interests in partnership ABCDE. Partnership ABCDE then terminates.

(6) *Prescribed form not followed in certain circumstances.* If any transactions described in paragraph (d)(3) of this section are part of a larger series of transactions, and the substance of the larger series of transactions is inconsistent with following the form prescribed in such paragraph, the Commissioner may disregard such form, and may recast the larger series of transactions in accordance with their substance.

(7) *Effective date.* This paragraph (d) is applicable to partnership divisions occurring on or after January 4, 2001. However, a partnership may apply paragraph (d) of this section to partnership divisions occurring on or after January 11, 2000.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8717, 62 FR 25500, May 9, 1997; T.D. 8925, 65 FR 719, Jan. 4, 2001; 67 FR 57330, Sept. 10, 2002]

§ 1.709-1 Treatment of organization and syndication costs.

(a) *General rule.* Except as provided in paragraph (b) of this section, no deduction shall be allowed under chapter 1 of the Code to a partnership or to any partner for any amounts paid or incurred, directly or indirectly, in partnership taxable years beginning after December 31, 1975, to organize a partnership, or to promote the sale of, or to sell, an interest in the partnership.

(b) [Reserved] For further guidance, see § 1.709-1T.

[T.D. 7891, 48 FR 20048, May 4, 1983, as amended by T.D. 9411, 73 FR 38914, July 8, 2008]

§ 1.709-1T Treatment of organizational expenses and syndication costs (temporary).

(a) [Reserved] For further guidance, see § 1.709-1(a).

(b) *Election to amortize organizational expenses—(1) In general.* Under section 709(b), a partnership may elect to amortize organizational expenses as defined in section 709(b)(3) and § 1.709-2(a). In the taxable year in which a partnership begins business, an electing part-

nership may deduct an amount equal to the lesser of the amount of the organizational expenses of the partnership, or \$5,000 (reduced (but not below zero) by the amount by which the organizational expenses exceed \$50,000). The remainder of the organizational expenses is deductible ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses of the partnership are considered in determining whether the organizational expenses exceed \$50,000, including expenses incurred on or before October 22, 2004.

(2) *Time and manner of making election.* A partnership is deemed to have made an election under section 709(b) to amortize organizational expenses as defined in section 709(b)(3) and § 1.709-2(a) for the taxable year in which the partnership begins business. A partnership may choose to forgo the deemed election by clearly electing to capitalize its organizational expenses on a timely filed Federal income tax return (including extensions) for the taxable year in which the partnership begins business. The election either to amortize organizational expenses under section 709(b) or to capitalize organizational expenses is irrevocable and applies to all organizational expenses of the partnership. A change in the characterization of an item as an organizational expense is a change in method of accounting to which sections 446 and 481(a) apply if the partnership treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the partnership begins business also is treated as a change in method of accounting if the partnership amortized organizational expenses for two or more taxable years.

(3) *Liquidation of partnership.* If there is a winding up and complete liquidation of the partnership prior to the end of the amortization period, the unamortized amount of organizational expenses is a partnership deduction in its final taxable year to the extent provided under section 165 (relating to losses). However, there is no partnership deduction with respect to its capitalized syndication expenses.

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(4) *Examples.* The following examples illustrate the application of this section:

Example 1. Expenditures of \$5,000 or less. Partnership X, a calendar year taxpayer, incurs \$3,000 of organizational expenses after October 22, 2004, and begins business on July 1, 2009. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct the entire amount of the organizational expenses in 2009, the taxable year in which Partnership X begins business.

Example 2. Expenditures of more than \$5,000 but less than or equal to \$50,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of \$41,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct \$5,000 and the portion of the remaining \$36,000 that is allocable to July through December of 2009 ($\$36,000/180 \times 6 = \$1,200$) in 2009, the taxable year in which Partnership X begins business.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Partnership X realizes in 2011 that Partnership X incurred \$10,000 for an additional organizational expense erroneously deducted in 2009 under section 162 as a business expense. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2009, including the additional \$10,000 of organizational expenses. Partnership X is using an impermissible method of accounting for the additional \$10,000 of organizational expenses and must change its method under § 1.446-1(e) and the applicable general administrative procedures in effect in 2011.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2010, Partnership X deducted the organizational expenses allocable to January through December of 2010 ($\$36,000/180 \times 12 = \$2,400$). In addition, in 2011 it is determined that Partnership X actually began business in 2010. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2010. Partnership X impermissibly deducted organizational expenses in 2009, and incorrectly determined the amount of organizational expenses deducted in 2010. Therefore, Partnership X is using an impermissible method of accounting for the organizational expenses and must change its method under § 1.446-1(e) and the applicable general administrative procedures in effect in 2011.

Example 5. Expenditures of more than \$50,000 but less than or equal to \$55,000. The facts are

the same as in *Example 1* except that Partnership X incurs organizational expenses of \$54,500. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct \$500 ($\$5,000 - 4,500$) and the portion of the remaining \$54,000 that is allocable to July through December of 2009 ($\$54,000/180 \times 6 = \$1,800$) in 2009, the taxable year in which Partnership X begins business.

Example 6. Expenditures of more than \$55,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of \$450,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct the amounts allocable to July through December of 2009 ($\$450,000/180 \times 6 = \$15,000$) in 2009, the taxable year in which Partnership X begins business.

(5) *Effective/applicability date.* This section applies to organizational expenses paid or incurred after September 8, 2008. However, taxpayers may apply all the provisions of this section to organizational expenses paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (b)(2) of this section is deemed made has not expired. Otherwise, for organizational expenses paid or incurred prior to September 8, 2008, see § 1.709-1 in effect prior to that date (§ 1.709-1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

(6) *Expiration date.* This section expires on July 7, 2011.

[T.D. 9411, 73 FR 38914, July 8, 2008]

§ 1.709-2 Definitions.

(a) *Organizational expenses.* Section 709(b)(2) of the Internal Revenue Code defines organizational expenses as expenses which:

(1) Are incident to the creation of the partnership;

(2) Are chargeable to capital account; and

(3) Are of a character which, if expended incident to the creation of a partnership having an ascertainable life, would (but for section 709(a)) be amortized over such life.

An expenditure which fails to meet one or more of these three tests does not qualify as an organizational expense