

§ 1.706-2T

26 CFR Ch. I (4-1-14 Edition)

shall be allocated to him under section 704(e)(2).

(6) *Foreign taxes.* For rules relating to the treatment of foreign taxes paid or accrued by a partnership, see §1.901-2(f)(4)(i) and (f)(4)(ii).

(d) *Effective date.* The rules of this section are applicable for taxable years ending on or after May 17, 2002, except for paragraph (c), which applies for taxable years beginning after December 31, 1953.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7286, 38 FR 26912, Sept. 27, 1973; T.D. 8123, 52 FR 3623, Feb. 5, 1987; T.D. 8996, 67 FR 35020, May 17, 2002; T.D. 9009, 67 FR 48019, July 23, 2002; T.D. 9576, 77 FR 8124, Feb. 14, 2012]

§ 1.706-2T Temporary regulations; question and answer under the Tax Reform Act of 1984.

Question 1: For purposes of section 706(d), how is an otherwise deductible amount that is deferred under section 267(a)(2) treated?

Answer 1: In the year the deduction is allowed, the deduction will constitute an allocable cash basis item under section 706(d)(2)(B)(iv).

(Secs. 267(f)(2)(B), 706(d)(2)(B)(iv), 1502, and 7805, Internal Revenue Code of 1954 (98 Stat. 704, 26 U.S.C. 267; 98 Stat. 589, 26 U.S.C. 706; 68A Stat. 367, 26 U.S.C. 1502; 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7991, 49 FR 47001, Nov. 30, 1984]

§ 1.707-0 Table of contents.

This section lists the captions that appear in §§1.707-1 through 1.707-9.

§ 1.707-1 Transactions Between Partner and Partnership

- (a) Partner not acting in capacity as partner.
- (b) Certain sales or exchanges of property with respect to controlled partnerships.
 - (1) Losses disallowed.
 - (2) Gains treated as ordinary income.
 - (3) Ownership of a capital or profits interest.
- (c) Guaranteed payments.

§ 1.707-2 Disguised Payments for Services. [Reserved]

§ 1.707-3 Disguised Sales of Property to Partnership; General Rule.

- (a) Treatment of transfers as a sale.
 - (1) In general.
 - (2) Definition and timing of sale.

- (3) Application of disguised sale rules.
- (4) Deemed terminations under section 708.
 - (b) Transfers treated as a sale.
 - (1) In general.
 - (2) Facts and circumstances.
 - (c) Transfers made within two years presumed to be a sale.
 - (1) In general.
 - (2) Disclosure of transfers made within two years.
 - (d) Transfers made more than two years apart presumed not to be a sale.
 - (e) Scope.
 - (f) Examples.

§ 1.707-4 Disguised Sales of Property to Partnership; Special Rules Applicable to Guaranteed Payments, Preferred Returns, Operating Cash Flow Distributions, and Reimbursements of Preformation Expenditures

- (a) Guaranteed payments and preferred returns.
 - (1) Guaranteed payment not treated as part of a sale.
 - (i) In general.
 - (ii) Reasonable guaranteed payments.
 - (iii) Unreasonable guaranteed payments.
 - (2) Presumption regarding reasonable preferred returns.
 - (3) Definition of reasonable preferred returns and guaranteed payments.
 - (i) In general.
 - (ii) Reasonable amount.
 - (4) Examples.
 - (b) Presumption regarding operating cash flow distributions.
 - (1) In general.
 - (2) Operating cash flow distributions.
 - (i) In general.
 - (ii) Operating cash flow safe harbor.
 - (iii) Tiered partnerships.
 - (c) Accumulation of guaranteed payments, preferred returns, and operating cash flow distributions.
 - (d) Exception for reimbursements of preformation expenditures.
 - (e) Other exceptions.

§ 1.707-5 Disguised Sales of Property to Partnership; Special Rules Relating to Liabilities

- (a) Liability assumed or taken subject to by partnership.
 - (1) In general.
 - (2) Partner's share of liability.
 - (i) Recourse liability.
 - (ii) Nonrecourse liability.
 - (3) Reduction of partner's share of liability.
 - (4) Special rule applicable to transfers of encumbered property to a partnership by more than one partner pursuant to a plan.
 - (5) Special rule applicable to qualified liabilities.
 - (6) Qualified liability of a partner defined.
 - (7) Liability incurred within two years of transfer presumed to be in anticipation of the transfer.

Internal Revenue Service, Treasury

§ 1.707-1

- (i) In general.
- (ii) Disclosure of transfers of property subject to liabilities incurred within two years of the transfer.
 - (b) Treatment of debt-financed transfers of consideration by partnerships.
 - (1) In general.
 - (2) Partner's allocable share of liability.
 - (i) In general.
 - (ii) Debt-financed transfers made pursuant to a plan.
 - (A) In general.
 - (B) Special rule.
 - (iii) Reduction of partner's share of liability.
 - (c) Refinancings.
 - (d) Share of liability where assumption accompanied by transfer of money.
 - (e) Tiered partnerships and other related persons.
 - (f) Examples.

§ 1.707-6 Disguised Sales of Property by Partnership to Partner; General Rules

- (a) In general.
- (b) Special rules relating to liabilities.
 - (1) In general.
 - (2) Qualified liabilities.
 - (c) Disclosure rules.
 - (d) Examples.

§ 1.707-7 Disguised Sales of Partnership Interests. [Reserved]

§ 1.707-8 Disclosure of Certain Information

- (a) In general.
- (b) Method of providing disclosure.
- (c) Disclosure by certain partnerships.

§ 1.707-9 Effective Dates and Transitional Rules

- (a) Sections 1.707-3 through 1.707-6.
 - (1) In general.
 - (2) Transfers occurring on or before April 24, 1991.
 - (3) Effective date of section 73 of the Tax Reform Act of 1984.
- (b) Section 1.707-8 disclosure of certain information.

[T.D. 8439, 57 FR 44978, Sept. 30, 1992]

§ 1.707-1 Transactions between partner and partnership.

(a) *Partner not acting in capacity as partner.* A partner who engages in a transaction with a partnership other than in his capacity as a partner shall be treated as if he were not a member of the partnership with respect to such transaction. Such transactions include, for example, loans of money or property by the partnership to the partner or by the partner to the partnership, the sale of property by the partner to

the partnership, the purchase of property by the partner from the partnership, and the rendering of services by the partnership to the partner or by the partner to the partnership. Where a partner retains the ownership of property but allows the partnership to use such separately owned property for partnership purposes (for example, to obtain credit or to secure firm creditors by guaranty, pledge, or other agreement) the transaction is treated as one between a partnership and a partner not acting in his capacity as a partner. However, transfers of money or property by a partner to a partnership as contributions, or transfers of money or property by a partnership to a partner as distributions, are not transactions included within the provisions of this section. In all cases, the substance of the transaction will govern rather than its form. See paragraph (c)(3) of § 1.731-1.

(b) *Certain sales or exchanges of property with respect to controlled partnerships—(1) Losses disallowed.* (i) No deduction shall be allowed for a loss on a sale or exchange of property (other than an interest in the partnership, directly or indirectly, between a partnership and a partner who owns, directly or indirectly, more than 50 percent of the capital interest or profits interest in such partnership. A loss on a sale or exchange of property, directly or indirectly, between two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interest or profits interest in each partnership shall not be allowed.

(ii) If a gain is realized upon the subsequent sale or exchange by a transferee of property with respect to which a loss was disallowed under the provisions of subdivision (i) of this subparagraph, section 267(d) (relating to amount of gain where loss previously disallowed) shall apply as though the loss were disallowed under section 267(a)(1).

(2) *Gains treated as ordinary income.* Any gain recognized upon the sale or exchange, directly or indirectly, of property which, in the hands of the transferee immediately after the transfer, is property other than a capital asset, as defined in section 1221, shall