

(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, 2011. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct the entire amount of the organizational expenses in 2011, 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 amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct \$5,000 and the portion of the remaining \$36,000 that is allocable to July through December of 2011 ( $\$36,000/180 \times 6 = \$1,200$ ) in 2011, the taxable year in which Partnership X begins business. Partnership X may amortize the remaining \$34,800 ( $\$36,000 - \$1,200 = \$34,800$ ) ratably over the remaining 174 months.

*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 2013 that Partnership X incurred \$10,000 for an additional organizational expense erroneously deducted in 2011 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 2011, 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 2013.

*Example 4. Subsequent redetermination of year in which business begins.* The facts are the same as in *Example 2* except that, in 2012, Partnership X deducted the organizational expenses allocable to January through December of 2012 ( $\$36,000/180 \times 12 = \$2,400$ ). In addition, in 2013 it is determined that Partnership X actually began business in 2012. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2012. Partnership X impermissibly deducted organizational expenses in 2011, and incorrectly determined the amount of organizational expenses deducted in 2012. 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 2013.

*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 amortize organizational expenses under section 709(b) in 2011. 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 2011 ( $\$54,000/180 \times 6 = \$1,800$ ) in 2011, the taxable year in which Partnership X begins business. Partnership X may amortize the remaining \$52,200 ( $\$54,000 - \$1,800 = \$52,200$ ) ratably over the remaining 174 months.

*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 amortize organizational expenses under section 709(b) in 2011. Therefore, Partnership X may deduct the amounts allocable to July through December of 2011 ( $\$450,000/180 \times 6 = \$15,000$ ) in 2011, the taxable year in which Partnership X begins business. Partnership X may amortize the remaining \$435,000 ( $\$450,000 - \$15,000 = \$435,000$ ) ratably over the remaining 174 months.

(5) *Effective/applicability date.* This section applies to organizational expenses paid or incurred after August 16, 2011. 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. For organizational expenses paid or incurred on or before September 8, 2008, taxpayers may instead apply § 1.709-1, as in effect prior to that date (§ 1.709-1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

[T.D. 7891, 48 FR 20048, May 4, 1983, as amended by T.D. 9411, 73 FR 38914, July 8, 2008; T.D. 9542, 76 FR 50890, Aug. 17, 2011; 76 FR 56973, Sept. 15, 2011]

#### § 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 for purposes of section 709(b) and this section. To satisfy the statutory requirement described in paragraph (a)(1) of this section, the expense must be incurred during the period beginning at a point which is a reasonable time before the partnership begins business and ending with the date prescribed by law for filing the partnership return (determined without regard to any extensions of time) for the taxable year the partnership begins business. In addition, the expenses must be for creation of the partnership and not for operation or starting operation of the partnership trade or business. To satisfy the statutory requirement described in paragraph (a)(3) of this section, the expense must be for an item of a nature normally expected to benefit the partnership throughout the entire life of the partnership. The following are examples of organizational expenses within the meaning of section 709 and this section: Legal fees for services incident to the organization of the partnership, such as negotiation and preparation of a partnership agreement; accounting fees for services incident to the organization of the partnership; and filing fees. The following are examples of expenses that are not organizational expenses within the meaning of section 709 and this section (regardless of how the partnership characterizes them): Expenses connected with acquiring assets for the partnership or transferring assets to the partnership; expenses connected with the admission or removal of partners other than at the time the partnership is first organized; expenses connected with a contract relating to the operation of the partnership trade or business (even where the contract is between the partnership and one of its members); and syndication expenses.

(b) *Syndication expenses.* Syndication expenses are expenses connected with

the issuing and marketing of interests in the partnership. Examples of syndication expenses are brokerage fees; registration fees; legal fees of the underwriter or placement agent and the issuer (the general partner or the partnership) for securities advice and for advice pertaining to the adequacy of tax disclosures in the prospectus or placement memorandum for securities law purposes; accounting fees for preparation of representations to be included in the offering materials; and printing costs of the prospectus, placement memorandum, and other selling and promotional material. These expenses are not subject to the election under section 709(b) and must be capitalized.

(c) *Beginning business.* The determination of the date a partnership begins business for purposes of section 709 presents a question of fact that must be determined in each case in light of all the circumstances of the particular case. Ordinarily, a partnership begins business when it starts the business operations for which it was organized. The mere signing of a partnership agreement is not alone sufficient to show the beginning of business.

If the activities of the partnership have advanced to the extent necessary to establish the nature of its business operations, it will be deemed to have begun business. Accordingly, the acquisition of operating assets which are necessary to the type of business contemplated may constitute beginning business for these purposes. The term *operating assets*, as used herein, means assets that are in a state of readiness to be placed in service within a reasonable period following their acquisition.

[T.D. 7891, 48 FR 20049, May 4, 1983]

#### CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

##### CONTRIBUTIONS TO A PARTNERSHIP

#### **§ 1.721-1 Nonrecognition of gain or loss on contribution.**

(a) No gain or loss shall be recognized either to the partnership or to any of its partners upon a contribution of property, including installment obligations, to the partnership in exchange