

18. In § 320.25, paragraphs (a) and (b) are revised to read as follows:

**§ 320.25 Hearing of appeal.**

(a) *Manner of conducting hearing.* The hearing shall be informal, fair, and impartial, and shall be conducted in such manner as to ascertain the substantial rights of the parties. The hearing shall not be open to the public.

(b) *Evidence presented in support of appeal.* (1) Any party, or his or her representative, shall be afforded full opportunity to present evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by a party or his representative, the hearings officer shall provide the parties or their representatives with a copy of such evidence. In such event, any party shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. Any party may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

\* \* \* \* \*

19. Section 320.28 is revised to read as follows:

**§ 320.28 Record of evidence considered.**

The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by any party or by his or her duly authorized representative.

20. Section 320.39 is revised to read as follows:

**§ 320.39 Execution and filing of appeal to Board from decision of hearings officer.**

(a) An appeal to the Board from the decision of a hearings officer shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the hearings officer was mailed to the parties. The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal. Provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the appeal form to the claimant. However, when a party fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if along with the final appeal, the party in writing requests an extension of time. The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the party has good cause for not filing the final appeal form within the time limit prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 320.10(e) of this part in determining if good cause exists.

(b) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

21. The heading of § 320.40 is revised, and a new paragraph (d) is added to read as follows:

**§ 320.40 Procedure before the Board on appeal from a decision of a hearings officer.**

\* \* \* \* \*

(d) Any party may submit additional argument in writing with the appeal to the Board. No party shall have the right to an oral presentation before the Board

except where the Board so permits. Such presentation may be limited in form, subject matter, length, and time as the Board may indicate to the parties.

22. Section 320.49 is revised to read as follows:

**§ 320.49 Determination of date of filing.**

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

Dated: March 21, 2002.

By Authority of the Board, for the Board,

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 02-7392 Filed 3-28-02; 8:45 am]

BILLING CODE 7905-01-P

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-167648-01]

RIN 1545-BA50

**Amendments to Rules for Determination of Basis of Partner's Interest; Special Rules**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to special rules on determination of basis of a partner's interest under section 705. The proposed regulations are necessary to coordinate sections 705 and 1032.

**DATES:** Written or electronic comments and requests for a public hearing must be received by June 27, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-167648-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday

between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-167648-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS internet site at [www.irs.gov/reg](http://www.irs.gov/reg).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the regulations, Barbara MacMillan or Rebekah A. Myers, (202) 622-3050; concerning submissions of comments or requests for a hearing, LaNita VanDyke at (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 3, 2001, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-106702-00, 2001-4 I.R.B. 424) under section 705 of the Internal Revenue Code (Code) in the **Federal Register** (66 FR 315). Those proposed regulations provided guidance on the coordination of sections 705 and 1032 in situations where a corporation acquires an interest in a partnership that holds stock in that corporation, a section 754 election is not in effect with respect to the partnership for the taxable year in which the corporation acquires the interest, and the partnership later sells or exchanges the stock. Final regulations for the issues addressed in those proposed regulations are being published elsewhere in this issue of the **Federal Register**. These proposed regulations propose to revise the final regulations contained in § 1.705-2 of 26 CFR part 1 to address remaining issues that Treasury and the IRS considered during the development of the final regulations.

**Explanation of Provisions**

These proposed regulations provide guidance in situations in which a corporation owns a direct or indirect interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. For reasons similar to those explained in the preamble of the final regulations, in those situations it may be inconsistent with the intent of sections 705 and 1032 to increase the basis of the corporation's partnership interest by the full amount of any gain resulting from the partnership's sale or exchange of the stock which is not recognized by the corporation under section 1032.

Accordingly, the proposed regulations revise the purpose statement of § 1.705-2(a) to take into account situations involving such partnership distributions. The proposed regulations provide a specific rule implementing the revised purpose in single partnership cases. The proposed regulations also revise § 1.705-2(c) to clarify that the tiered partnerships rule applies to situations involving such partnership distributions.

In addition, the proposed regulations clarify that references in the regulations to stock of a corporate partner include any position in stock of a corporate partner to which section 1032 applies.

**Proposed Effective Date**

The regulations are proposed to apply to sales or exchanges of stock occurring after March 29, 2002.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Barbara MacMillan of the Office of the Associate Chief Counsel (Passthroughs and

Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income Taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—INCOME TAXES**

1. The authority citation for part 1 continues to read in part as follows:

*Authority:* 26 U.S.C. 7805 \* \* \*

2. Section 1.705-1 is amended by revising paragraph (a)(7) to read as follows:

**§ 1.705-1 Determination of basis of partner's interest.**

(a) \* \* \*

(7) For basis adjustments necessary to coordinate sections 705 and 1032 in certain situations in which a partnership disposes of stock or any position in stock to which section 1032 applies of a corporation that holds a direct or indirect interest in the partnership, see § 1.705-2.

\* \* \* \* \*

3. Section 1.705-2 is amended as follows:

1. Paragraph (a) is amended by adding a new sentence after the third sentence.

2. Paragraph (b) is amended by adding paragraph (b)(2).

3. Paragraph (c)(1) is amended by adding a new sentence after the second sentence.

4. Paragraph (d) is added.

5. Paragraph (e) is amended by removing the period at the end of the paragraph and adding a new phrase at the end of the paragraph.

The additions and revision read as follows:

**§ 1.705-2 Basis adjustments coordinating sections 705 and 1032.**

(a) \* \* \* Similarly, in situations where a section 754 election was not in effect for the year in which a partnership distributes money or other property to another partner and that partner recognizes gain on the distribution, the remaining partners' inside basis and outside basis may not be equal. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(2) *Required adjustments relating to distributions.* (i) This paragraph (b)(2) applies in situations where a corporation owns a direct or indirect

interest in a partnership that owns stock in that corporation, the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock. In these situations, the increase (or decrease) in the corporation's adjusted basis in its partnership interest resulting from the sale or exchange of the stock equals the amount of gain (or loss) that the corporate partner would have recognized (absent the application of section 1032) if, for the year in which the partnership made the distribution, a section 754 election had been in effect.

(ii) The provisions of this paragraph (b)(2) are illustrated by the following example:

*Example.* (i) A, B, and corporation C form partnership PRS. A and B each contribute \$10,000 and C contributes \$20,000 in exchange for a partnership interest. PRS has no liabilities. PRS purchases stock in corporation C for \$10,000, which appreciates in value to \$70,000. PRS distributes \$25,000 to A in complete liquidation of A's interest in PRS in a year for which an election under section 754 is not in effect. PRS later sells the C stock for \$70,000. PRS realizes a gain of \$60,000 on the sale of the C stock. C's share of the gain is \$40,000. Under section 1032, C does not recognize its share of the gain.

(ii) Normally, C would be entitled to a \$40,000 increase in the basis of its PRS interest for its allocable share of PRS's gain from the sale of the C stock, but a special rule applies in this situation. If a section 754 election had been in effect for the year in which PRS made the distribution to A, PRS would have been entitled to adjust the basis of partnership property under section 734(b)(1)(A) by \$15,000 (the amount of gain recognized by A with respect to the distribution to A under section 731(a)(1)). See § 1.734-1(b). Under § 1.755-1(c)(1)(ii), the basis adjustment under section 734(b) would have been allocated to the C stock, increasing its basis to \$25,000. (where there is a distribution resulting in an adjustment under section 734(b)(1)(A) to the basis of undistributed partnership property, the adjustment is allocated only to capital gain property.)

(iii) If a section 754 election had been in effect for the year in which PRS made the distribution to A, the amount of gain that PRS would have recognized upon PRS's disposition of C stock would be \$45,000 (\$70,000 minus \$25,000 basis in the C stock), and the amount of gain C would have recognized upon PRS's disposition of the C stock (absent the application of section 1032) would be \$30,000 (C's share of PRS's gain of \$45,000 from the stock sale). Accordingly, upon PRS's sale of the C stock, the increase in the basis of C's interest in PRS is \$30,000.

\* \* \* \* \*

(c)(1) \* \* \* Similarly, if a corporation owns an indirect interest in its own

stock through a chain of two or more partnerships, and a partnership in the chain distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, then upon any subsequent sale or exchange of the stock, the bases of the interests in the partnerships included in the chain shall be adjusted in a manner that is consistent with the purpose of this section.

\* \* \* \* \*

(d) *Positions in Stock.* For purposes of this section, stock includes any position in stock to which section 1032 applies.

(e) \* \* \*, except that the fourth sentence of paragraph (a), paragraph (b)(2), and the third sentence of paragraph (c)(1) of this section are applicable with respect to sales or exchanges of stock occurring on or after March 29, 2002.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02-7650 Filed 3-28-02; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 58 and 72

**RIN 1219-AB24**

#### Measuring and Controlling Asbestos Exposure

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Advance notice of proposed rulemaking; notice of public meetings; notice of close of record.

**SUMMARY:** We, the Mine Safety and Health Administration (MSHA), are requesting information from the public concerning ways to increase protection to miners when they are working in environments where asbestos is present. We are concerned that miners may be exposed to asbestos at mining operations with the ore bodies containing asbestos. There is also a potential exposure at mine facilities with installed asbestos-containing material which may be disturbed. Miners who are exposed may also bring the substance home on their persons and clothes, and in their automobiles.

Exposure to asbestos can cause asbestosis, mesothelioma, lung cancer, and cancers of the digestive system. A recent report by the U.S. Department of Labor's Office of the Inspector General

(OIG) recommended that MSHA lower its existing Permissible Exposure Limit (PEL) for asbestos to a more protective level and address take-home contamination from asbestos. The report also recommended that MSHA use Transmission Electron Microscopy (TEM) instead of Phase Contrast Microscopy (PCM) to analyze fiber samples that may contain asbestos. We intend to use the submitted information to help determine how we should proceed to address these issues.

We are also announcing in this document our intent to hold six (6) public meetings to allow early participation in the rulemaking by interested parties.

**DATES:** Comments on the advance notice of proposed rulemaking (ANPRM) must be received on or before June 27, 2002.

The public meeting dates and locations are listed in the Public Meetings section below under **SUPPLEMENTARY INFORMATION.**

You do not have to submit a written request to speak. There will be a sign-up sheet at each of the meeting locations. Speakers will speak in the order that they sign in. Speakers may also present information to the MSHA panel for inclusion in the rulemaking record.

The rulemaking record will close June 27, 2002.

**ADDRESSES:** Comments on the ANPRM may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as pertaining to this ANPRM and sent to: [comments@msha.gov](mailto:comments@msha.gov). Comments by fax must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, 703-235-5551. Comments by mail must be clearly identified and sent to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203-1984.

The public meeting dates and locations are listed in the Public Meetings section below under **SUPPLEMENTARY INFORMATION.**

This notice is available on our Web page at <http://www.msha.gov>, under Statutory and Regulatory Information. We intend to place the public comments on our website within five (5) working days after we receive them.

**FOR FURTHER INFORMATION CONTACT:** Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances; MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203-1984. Mr. Nichols can be reached at [Nichols-Marvin@msha.gov](mailto:Nichols-Marvin@msha.gov) (e-mail), (703) 235-1910 (Voice), or 703-235-5551 (Fax).