

Subsec. (c)(2)(B). Pub. L. 98-369, §72(b)(2), struck out “, but such partner’s distributive share of items described in section 702(a) shall be determined by taking into account his varying interests in the partnership during the taxable year” after “otherwise)”.

Subsec. (d). Pub. L. 98-369, §72(a), added subsec. (d). 1976—Subsec. (b)(1), (2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(2). Pub. L. 94-455, §§213(c)(1), 1906(b)(13)(A), substituted “or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner’s interest, gift, or otherwise)” for “or with respect to a partner whose interest is reduced”, in par. (B), and struck out “or his delegate” after “Secretary” in par. (A).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 507(b)(2) of Pub. L. 105-34 applicable to sales or exchanges after Aug. 5, 1997, see section 507(c)(2) of Pub. L. 105-34, set out as a note under section 644 of this title.

Pub. L. 105-34, title XII, §1246(c), Aug. 5, 1997, 111 Stat. 1030, provided that: “The amendments made by this section [amending this section] shall apply to partnership taxable years beginning after December 31, 1997.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 806(a) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99-514, set out as a note under section 1378 of this title.

Amendment by section 1805(a) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §72(c), July 18, 1984, 98 Stat. 591, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section] shall apply—

“(1) in the case of items described in section 706(d)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)), to amounts attributable to periods after March 31, 1984, and

“(2) in the case of items described in section 706(d)(3) of such Code (as added by subsection (a)), to amounts paid or accrued by the other partnership after March 31, 1984.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(1) of Pub. L. 94-455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f) of Pub. L. 94-455, set out as an Effective Date note under section 709 of this title.

CONSTRUCTION OF SECTION 806 OF PUB. L. 99-514

Nothing in section 806 of Pub. L. 99-514 or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100-647, set out as a note under section 1378 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 707. Transactions between partner and partnership

(a) Partner not acting in capacity as partner

(1) In general

If a partner engages in a transaction with a partnership other than in his capacity as a member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner.

(2) Treatment of payments to partners for property or services

Under regulations prescribed by the Secretary—

(A) Treatment of certain services and transfers of property

If—

(i) a partner performs services for a partnership or transfers property to a partnership,

(ii) there is a related direct or indirect allocation and distribution to such partner, and

(iii) the performance of such services (or such transfer) and the allocation and distribution, when viewed together, are properly characterized as a transaction occurring between the partnership and a partner acting other than in his capacity as a member of the partnership,

such allocation and distribution shall be treated as a transaction described in paragraph (1).

(B) Treatment of certain property transfers

If—

(i) there is a direct or indirect transfer of money or other property by a partner to a partnership,

(ii) there is a related direct or indirect transfer of money or other property by the partnership to such partner (or another partner), and

(iii) the transfers described in clauses (i) and (ii), when viewed together, are properly characterized as a sale or exchange of property,

such transfers shall be treated either as a transaction described in paragraph (1) or as a transaction between 2 or more partners acting other than in their capacity as members of the partnership.

(b) Certain sales or exchanges of property with respect to controlled partnerships

(1) Losses disallowed

No deduction shall be allowed in respect of losses from sales or exchanges of property

(other than an interest in the partnership), directly or indirectly, between—

(A) a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, or

(B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

In the case of a subsequent sale or exchange by a transferee described in this paragraph, section 267(d) shall be applicable as if the loss were disallowed under section 267(a)(1). For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).

(2) Gains treated as ordinary income

In the case of a sale or exchange, directly or indirectly, of property, which in the hands of the transferee, is property other than a capital asset as defined in section 1221—

(A) between a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or profits interest, in such partnership, or

(B) between two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests,

any gain recognized shall be considered as ordinary income.

(3) Ownership of a capital or profits interest

For purposes of paragraphs (1) and (2) of this subsection, the ownership of a capital or profits interest in a partnership shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) other than paragraph (3) of such section.

(c) Guaranteed payments

To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61(a) (relating to gross income) and, subject to section 263, for purposes of section 162(a) (relating to trade or business expenses).

(Aug. 16, 1954, ch. 736, 68A Stat. 243; Pub. L. 94-455, title II, § 213(b)(3), title XIX, § 1901(b)(3)(C), Oct. 4, 1976, 90 Stat. 1547, 1792; Pub. L. 98-369, div. A, title I, § 73(a), July 18, 1984, 98 Stat. 591; Pub. L. 99-514, title VI, § 642(a)(2), title XVIII, §§ 1805(b), 1812(c)(3)(A), (B), Oct. 22, 1986, 100 Stat. 2284, 2810, 2834.)

AMENDMENTS

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99-514, § 1805(b), substituted “sale or exchange of property” for “sale of property”.

Subsec. (b)(1). Pub. L. 99-514, § 1812(c)(3)(B), inserted at end “For purposes of section 267(a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b).”

Subsec. (b)(1)(A). Pub. L. 99-514, § 1812(c)(3)(A), substituted “a person” for “a partner”.

Subsec. (b)(2)(A). Pub. L. 99-514, § 1812(c)(3)(A), substituted “a person” for “a partner”.

Pub. L. 99-514, § 642(a)(2), substituted “50 percent” for “80 percent”.

Subsec. (b)(2)(B). Pub. L. 99-514, § 642(a)(2), substituted “50 percent” for “80 percent”.

1984—Subsec. (a). Pub. L. 98-369 designated existing provisions as par. (1) and added par. (2).

1976—Subsec. (b)(2). Pub. L. 94-455, § 1901(b)(3)(C), substituted “as ordinary income” for “as gain from the sale or exchange of property other than a capital asset”.

Subsec. (c). Pub. L. 94-455, § 213(b)(3), substituted “and, subject to section 263, for purposes of section 162(a)” for “and section 162(a)”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(a)(2) of Pub. L. 99-514 applicable to sales after Oct. 22, 1986, in taxable years ending after such date, but not applicable to sales made after Aug. 14, 1986, which are made pursuant to a binding contract in effect on Aug. 14, 1986, and at all times thereafter, see section 642(c) of Pub. L. 99-514, set out as a note under section 1239 of this title.

Amendment by sections 1805(b) and 1812(c)(3)(B) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Pub. L. 99-514, title XVIII, § 1812(c)(3)(A), Oct. 22, 1986, 100 Stat. 2834, provided that the amendment made by that section is effective with respect to sales or exchanges after Sept. 27, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, § 73(b), July 18, 1984, 98 Stat. 592, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply—

“(A) in the case of arrangements described in section 707(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)), to services performed or property transferred after February 29, 1984, and

“(B) in the case of transfers described in section 707(a)(2)(B) of such Code (as so amended), to property transferred after March 31, 1984.

“(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) if such transfer is pursuant to a binding contract in effect on March 31, 1984, and at all times thereafter before the transfer.

“(3) EXCEPTION FOR CERTAIN TRANSFERS.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) that is made before December 31, 1984, if—

“(A) such transfer was proposed in a written private offering memorandum circulated before February 28, 1984;

“(B) the out-of-pocket costs incurred with respect to such offering exceeded \$250,000 as of February 28, 1984;

“(C) the encumbrances placed on such property in anticipation of such transfer all constitute obligations for which neither the partnership nor any partner is liable; and

“(D) the transferor of such property is the sole general partner of the partnership.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(b)(3) of Pub. L. 94-455 applicable in the case of partnership taxable years beginning after Dec. 31, 1975, see section 213(f)(1) of Pub. L. 94-455, set out as an Effective Date note under section 709 of this title.

Amendment by section 1901(b)(3)(C) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 708. Continuation of partnership

(a) General rule

For purposes of this subchapter, an existing partnership shall be considered as continuing if it is not terminated.

(b) Termination

(1) General rule

For purposes of subsection (a), a partnership shall be considered as terminated only if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.

(2) Special rules

(A) Merger or consolidation

In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(B) Division of a partnership

In the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) shall, for purposes of this section, be considered a continuation of the prior partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 244; Pub. L. 115-97, title I, § 13504(a), Dec. 22, 2017, 131 Stat. 2141.)

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115-97 struck out dash after “only if” and subpar. (A) designation before “no part” and struck out subpar. (B) which read as follows: “within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to partnership taxable years beginning after Dec. 31, 2017, see section 13504(c) of Pub. L. 115-97, set out as a note under section 168 of this title.

§ 709. Treatment of organization and syndication fees

(a) General rule

Except as provided in subsection (b), no deduction shall be allowed under this chapter to the partnership or to any partner for any amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in such partnership.

(b) Deduction of organization fees

(1) Allowance of deduction

If a partnership elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

(A) the partnership shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

- (i) the amount of organizational expenses with respect to the partnership, or
- (ii) \$5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed \$50,000, and

(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

(2) Dispositions before close of amortization period

In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(3) Organizational expenses defined

The organizational expenses to which paragraph (1) applies, are expenditures which—

- (A) are incident to the creation of the partnership;
- (B) are chargeable to capital account; and
- (C) are of a character which, if expended incident to the creation of a partnership having an ascertainable life, would be amortized over such life.

(Added Pub. L. 94-455, title II, § 213(b)(1), Oct. 4, 1976, 90 Stat. 1547; amended Pub. L. 108-357, title VIII, § 902(c), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 109-135, title IV, § 403(l), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109-135 substituted “partnership” for “taxpayer” in introductory provisions and before “shall be allowed” in subpar. (A).

2004—Subsec. (b). Pub. L. 108-357 substituted “Deduction” for “Amortization” in heading, added par. (2), re-designated former par. (2) as (3), and amended heading and text of par. (1) generally. Prior to amendment, text of par. (1) read as follows: “Amounts paid or incurred to organize a partnership may, at the election of the partnership (made in accordance with regulations prescribed by the Secretary), be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the partnership (beginning with the month in which the partnership begins business), or if the partnership is liquidated before the end of such 60-month period, such deferred expenses (to the extent not deducted under this section) may be deducted to the extent provided in section 165.”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.