

“(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—

(A) 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, or

(B) 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.

#### (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 inter-

est 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.)

## § 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(I), 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), redesignated 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(nm) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to amounts paid or incurred after Oct. 22, 2004, see section 902(d) of Pub. L. 108-357, set out as a note under section 195 of this title.

EFFECTIVE DATE

Pub. L. 94-455, title II, §213(f), Oct. 4, 1976, 90 Stat. 1548, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 179, 704, 706, 707, and 761 of this title] shall apply in the case of partnership taxable years beginning after December 31, 1975.

“(2) SUBSECTION (e).—The amendment made by subsection (e) [amending section 704 of this title] shall apply to liabilities incurred after December 31, 1976.

“(3) SECTION 709(b) OF THE CODE.—Section 709(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by the amendment made by subsection (b)(1) of this section) shall apply in the case of amounts paid or incurred in taxable years beginning after December 31, 1976.”

PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

Subpart

- A. Contributions to a partnership.
- B. Distributions by a partnership.
- C. Transfers of interests in a partnership.
- D. Provisions common to other subparts.

SUBPART A—CONTRIBUTIONS TO A PARTNERSHIP

Sec.

- 721. Nonrecognition of gain or loss on contribution.
- 722. Basis of contributing partner's interest.
- 723. Basis of property contributed to partnership.
- 724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, §74(c), July 18, 1984, 98 Stat. 593, added item 724.

**§ 721. Nonrecognition of gain or loss on contribution**

**(a) General rule**

No gain or loss shall be recognized to a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership.

**(b) Special rule**

Subsection (a) shall not apply to gain realized on a transfer of property to a partnership which would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated.

**(c) Regulations relating to certain transfers to partnerships**

The Secretary may provide by regulations that subsection (a) shall not apply to gain realized on the transfer of property to a partnership if such gain, when recognized, will be includible in the gross income of a person other than a United States person.

**(d) Transfers of intangibles**

**For regulatory authority to treat intangibles transferred to a partnership as sold, see section 367(d)(3).**

(Aug. 16, 1954, ch. 736, 68A Stat. 245; Pub. L. 94-455, title XXI, §213(b), Oct. 4, 1976, 90 Stat. 1924; Pub. L. 105-34, title XI, §1131(b)(3), (5)(B), Aug. 5, 1997, 111 Stat. 979, 980.)

CODIFICATION

Another section 1131(b) of Pub. L. 105-34 enacted section 684 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105-34, §1131(b)(3), added subsec. (c).

Subsec. (d). Pub. L. 105-34, §1131(b)(5)(B), added subsec. (d).

1976—Pub. L. 94-455 designated existing provisions as subsec. (a), added subsec. (a) heading “General rule”, and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XXI, §213(f)(3)-(5), Oct. 4, 1976, 90 Stat. 1924, 1925, provided that:

“(3) Except as provided in paragraph (4), the amendments made by subsections (b) and (c) [amending this section and sections 722 and 723 of this title] shall apply to transfers made after February 17, 1976, in taxable years ending after such date.

“(4) The amendments made by subsections (b) and (c) shall not apply to transfers to a partnership made on or before the 90th day after the date of the enactment of this Act [Oct. 4, 1976] if—

“(A) either—

“(i) a ruling request with respect to such transfers was filed with the Internal Revenue Service before March 27, 1976, or

“(ii) a registration statement with respect to such transfers was filed with the Securities and Exchange Commission before March 27, 1976,

“(B) the securities transferred were deposited on or before the 60th day after the date of the enactment of this Act [Oct. 4, 1976], and

“(C) either—

“(i) the aggregate value (determined as of the close of the 60th day referred to in subparagraph (B), or, if earlier, the close of the deposit period) of the securities so transferred does not exceed \$100,000,000, or

“(ii) the securities transferred were all on deposit on February 29, 1976, pursuant to a registration statement referred to in subparagraph (A)(ii).

“(5) If no registration statement was required to be filed with the Securities and Exchange Commission with respect to the transfer of securities to any partnership, then paragraph (4) shall be applied to such transfers—

“(A) as if paragraph (4) did not contain subparagraph (A)(ii) thereof, and