

which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 213(c)(3)(B) 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 a note under section 709 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.

PART IV—SPECIAL RULES FOR ELECTING
LARGE PARTNERSHIPS

Sec.	
771.	Application of subchapter to electing large partnerships.
772.	Simplified flow-through.
773.	Computations at partnership level.
774.	Other modifications.
775.	Electing large partnership defined.
776.	Special rules for partnerships holding oil and gas properties.
777.	Regulations.

PRIOR PROVISIONS

A prior part IV, relating to effective date for subchapter, consisted of section 771 of this title, prior to repeal by Pub. L. 94-455, title XIX, § 1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

AMENDMENTS

1997—Pub. L. 105-34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1001, added part heading and section analysis.

§ 771. Application of subchapter to electing large partnerships

The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to an electing large partnership and its partners.

(Added Pub. L. 105-34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1002.)

PRIOR PROVISIONS

A prior section 771, act Aug. 16, 1954, ch. 736, 68A Stat. 253, related to the effective date for this subchapter, prior to repeal by Pub. L. 94-455, title XIX, § 1901(a)(94), Oct. 4, 1976, 90 Stat. 1780.

EFFECTIVE DATE

Pub. L. 105-34, title XII, § 1221(c), Aug. 5, 1997, 111 Stat. 1008, provided that: "The amendments made by this section [enacting this part] shall apply to partnership taxable years beginning after December 31, 1997."

This part applicable to partnership taxable years beginning after Dec. 31, 1997, see section 1226 of Pub. L. 105-34, as amended, set out as an Effective Date of 1997 Amendment note under section 6011 of this title.

§ 772. Simplified flow-through

(a) General rule

In determining the income tax of a partner of an electing large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

- (1) taxable income or loss from passive loss limitation activities,
- (2) taxable income or loss from other activities,
- (3) net capital gain (or net capital loss)—
 - (A) to the extent allocable to passive loss limitation activities, and
 - (B) to the extent allocable to other activities,
- (4) tax-exempt interest,
- (5) applicable net AMT adjustment separately computed for—
 - (A) passive loss limitation activities, and
 - (B) other activities,
- (6) general credits,
- (7) low-income housing credit determined under section 42,
- (8) rehabilitation credit determined under section 47,
- (9) foreign income taxes, and
- (10) other items to the extent that the Secretary determines that the separate treatment of such items is appropriate.

(b) Separate computations

In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

(c) Treatment at partner level

(1) In general

Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

(2) Income or loss from passive loss limitation activities

For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

(3) Income or loss from other activities

(A) In general

For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

(B) Deductions for loss not subject to section 67

The deduction under section 212 for any loss described in subparagraph (A) shall not be treated as a miscellaneous itemized deduction for purposes of section 67.

(4) Treatment of net capital gain or loss

For purposes of this chapter, any partner's distributive share of any gain or loss described

in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

(5) Minimum tax treatment

In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

(6) General credits

A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

(d) Operating rules

For purposes of this section—

(1) Passive loss limitation activity

The term “passive loss limitation activity” means—

- (A) any activity which involves the conduct of a trade or business, and
- (B) any rental activity.

For purposes of the preceding sentence, the term “trade or business” includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

(2) Tax-exempt interest

The term “tax-exempt interest” means interest excludable from gross income under section 103.

(3) Applicable net AMT adjustment

(A) In general

The applicable net AMT adjustment is—

- (i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and
- (ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

(B) Net adjustment

The term “net adjustment” means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

(4) Treatment of certain separately stated items

(A) Exclusion for certain purposes

In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be), and any item referred to in subsection (a)(11), shall be excluded.

(B) Allocation rules

The net capital gain shall be treated—

- (i) as allocable to passive loss limitation activities to the extent the net capital

gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

- (ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

(C) Net capital loss

The term “net capital loss” means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

(5) General credits

The term “general credits” means any credit other than the low-income housing credit, the rehabilitation credit, and the foreign tax credit.

(6) Foreign income taxes

The term “foreign income taxes” means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

(e) Special rule for unrelated business tax

In the case of a partner which is an organization subject to tax under section 511, such partner's distributive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

(f) Special rules for applying passive loss limitations

If any person holds an interest in an electing large partnership other than as a limited partner—

- (1) paragraph (2) of subsection (c) shall not apply to such partner, and
- (2) such partner's distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

(Added Pub. L. 105-34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1002; amended Pub. L. 109-58, title XIII, §1322(a)(3)(I), (J), Aug. 8, 2005, 119 Stat. 1012.)

AMENDMENTS

2005—Subsec. (a)(9) to (11). Pub. L. 109-58, §1322(a)(3)(I), inserted “and” at end of par. (9), redesignated par. (11) as (10), and struck out former par. (10) which read as follows: “the credit allowable under section 29, and”.

Subsec. (d)(5). Pub. L. 109-58, §1322(a)(3)(J), substituted “and the foreign tax credit” for “the foreign tax credit, and the credit allowable under section 29”.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-58 applicable to credits determined under the Internal Revenue Code of 1986 for taxable years ending after Dec. 31, 2005, see section 1322(c)(1) of Pub. L. 109-58, set out as a note under section 45K of this title.

§ 773. Computations at partnership level**(a) General rule****(1) Taxable income**

The taxable income of an electing large partnership shall be computed in the same manner as in the case of an individual except that—

(A) the items described in section 772(a) shall be separately stated, and

(B) the modifications of subsection (b) shall apply.

(2) Elections

All elections affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be made by the partnership; except that the election under section 901, and any election under section 108, shall be made by each partner separately.

(3) Limitations, etc.**(A) In general**

Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of an electing large partnership or the computation of any credit of an electing large partnership shall be applied at the partnership level (and not at the partner level).

(B) Certain limitations applied at partner level

The following provisions shall be applied at the partner level (and not at the partnership level):

(i) Section 68 (relating to overall limitation on itemized deductions).

(ii) Sections 49 and 465 (relating to at risk limitations).

(iii) Section 469 (relating to limitation on passive activity losses and credits).

(iv) Any other provision specified in regulations.

(4) Coordination with other provisions

Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

(b) Modifications to determination of taxable income

In determining the taxable income of an electing large partnership—

(1) Certain deductions not allowed

The following deductions shall not be allowed:

(A) The deduction for personal exemptions provided in section 151.

(B) The net operating loss deduction provided in section 172.

(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

(2) Charitable deductions

In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

(3) Coordination with section 67

In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

(c) Special rules for income from discharge of indebtedness

If an electing large partnership has income from the discharge of any indebtedness—

(1) such income shall be excluded in determining the amounts referred to in section 772(a), and

(2) in determining the income tax of any partner of such partnership—

(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and

(B) the provisions of section 108 shall be applied without regard to this part.

(Added Pub. L. 105-34, title XII, §1221(a), Aug. 5, 1997, 111 Stat. 1004.)

§ 774. Other modifications**(a) Treatment of certain optional adjustments, etc.**

In the case of an electing large partnership—

(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

(2) a partner's distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

(b) Credit recapture determined at partnership level**(1) In general**

In the case of an electing large partnership—

(A) any credit recapture shall be taken into account by the partnership, and

(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

(2) Method of taking recapture into account

An electing large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

(3) Dispositions not to trigger recapture

No credit recapture shall be required by reason of any transfer of an interest in an electing large partnership.

(4) Credit recapture

For purposes of this subsection, the term "credit recapture" means any increase in tax under section 42(j) or 50(a).

(c) Partnership not terminated by reason of change in ownership

Subparagraph (B) of section 708(b)(1) shall not apply to an electing large partnership.

(d) Partnership entitled to certain credits

The following shall be allowed to an electing large partnership and shall not be taken into account by the partners of such partnership:

(1) The credit provided by section 34.

(2) Any credit or refund under section 852(b)(3)(D) or 857(b)(3)(D).