

(e) Treatment of REMIC residuals

For purposes of applying section 860E(e)(6) to any electing large partnership—

- (1) all interests in such partnership shall be treated as held by disqualified organizations,
- (2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and
- (3) subparagraph (D) of section 860E(e)(6) shall not apply.

(f) Special rules for applying certain installment sale rules

In the case of an electing large partnership—

- (1) the provisions of sections 453(l)(3) and 453A shall be applied at the partnership level, and
- (2) in determining the amount of interest payable under such sections, such partnership shall be treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

(Added Pub. L. 105-34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1005; amended Pub. L. 105-206, title VI, § 6012(c), July 22, 1998, 112 Stat. 819.)

AMENDMENTS

1998—Subsec. (d)(2). Pub. L. 105-206 inserted “or 857(b)(3)(D)” before period at end.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

§ 775. Electing large partnership defined**(a) General rule**

For purposes of this part—

(1) In general

The term “electing large partnership” means, with respect to any partnership taxable year, any partnership if—

- (A) the number of persons who were partners in such partnership in the preceding partnership taxable year equaled or exceeded 100, and
- (B) such partnership elects the application of this part.

To the extent provided in regulations, a partnership shall cease to be treated as an electing large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

(2) Election

The election under this subsection shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(b) Special rules for certain service partnerships**(1) Certain partners not counted**

For purposes of this section, the term “partner” does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual

who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

(2) Exclusion

For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership if substantially all the partners of such partnership—

- (A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,
- (B) are retired partners who had performed such substantial services, or
- (C) are spouses of partners who are performing (or had previously performed) such substantial services.

(3) Special rule for lower tier partnerships

For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the partnership owns directly an interest in the capital and profits of at least 80 percent.

(c) Exclusion of commodity pools

For purposes of this part, an election under subsection (a) shall not be effective with respect to any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(a)(1)), or options, futures, or forwards with respect to such commodities.

(d) Secretary may rely on treatment on return

If, on the partnership return of any partnership, such partnership is treated as an electing large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

(Added Pub. L. 105-34, title XII, § 1221(a), Aug. 5, 1997, 111 Stat. 1006; amended Pub. L. 106-170, title V, § 532(c)(2)(G), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106-170 substituted “section 1221(a)(1)” for “section 1221(1)”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

§ 776. Special rules for partnerships holding oil and gas properties**(a) Computation of percentage depletion**

In the case of an electing large partnership, except as provided in subsection (b)—

- (1) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,
- (2) such allowance shall be determined without regard to the provisions of section 613A(c)