

(b) Special rule

In applying the allocation rules provided in subsection (a), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, property consisting of—

- (1) capital assets and property described in section 1231(b), or
- (2) any other property of the partnership,

shall be allocated to partnership property of a like character except that the basis of any such partnership property shall not be reduced below zero. If, in the case of a distribution, the adjustment to basis of property described in paragraph (1) or (2) is prevented by the absence of such property or by insufficient adjusted basis for such property, such adjustment shall be applied to subsequently acquired property of a like character in accordance with regulations prescribed by the Secretary.

(c) No allocation of basis decrease to stock of corporate partner

In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

- (1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and
- (2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108-357, title VIII, §834(a), Oct. 22, 2004, 118 Stat. 1592.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-357 added subsec. (c).
1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §834(b), Oct. 22, 2004, 118 Stat. 1592, provided that: “The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].”

PART III—DEFINITIONS

Sec.
761. Terms defined.

§ 761. Terms defined**(a) Partnership**

For purposes of this subtitle, the term “partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a

corporation or a trust or estate. Under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

- (1) for investment purposes only and not for the active conduct of a business,
- (2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or
- (3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) Partner

For purposes of this subtitle, the term “partner” means a member of a partnership.

(c) Partnership agreement

For purposes of this subchapter, a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions) which are agreed to by all the partners, or which are adopted in such other manner as may be provided by the partnership agreement.

(d) Liquidation of a partner’s interest

For purposes of this subchapter, the term “liquidation of a partner’s interest” means the termination of a partner’s entire interest in a partnership by means of a distribution, or a series of distributions, to the partner by the partnership.

(e) Distributions of partnership interests treated as exchanges

Except as otherwise provided in regulations, for purposes of—

- (1) section 708 (relating to continuation of partnership),
- (2) section 743 (relating to optional adjustment to basis of partnership property), and
- (3) any other provision of this subchapter specified in regulations prescribed by the Secretary,

any distribution of an interest in a partnership (not otherwise treated as an exchange) shall be treated as an exchange.

(f) Qualified joint venture**(1) In general**

In the case of a qualified joint venture conducted by a husband and wife who file a joint return for the taxable year, for purposes of this title—

- (A) such joint venture shall not be treated as a partnership,
- (B) all items of income, gain, loss, deduction, and credit shall be divided between the spouses in accordance with their respective interests in the venture, and
- (C) each spouse shall take into account such spouse’s respective share of such items as if they were attributable to a trade or