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).

(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