

distributions before Jan. 1, 1995, distributions in liquidation of partner's interest, or distributions in complete liquidation of publicly traded partnerships, see section 741(c) of Pub. L. 103-465, set out as a note under section 731 of this title.

#### EFFECTIVE DATE

Section applicable to distributions on or after June 25, 1992, see section 1937(c) of Pub. L. 102-486, set out as an Effective Date of 1992 Amendment note under section 704 of this title.

#### SUBPART C—TRANSFERS OF INTERESTS IN A PARTNERSHIP

Sec.

741. Recognition and character of gain or loss on sale or exchange.  
 742. Basis of transferee partner's interest.  
 743. Special rules where section 754 election or substantial built-in loss.

#### AMENDMENTS

2004—Pub. L. 108-357, title VIII, §833(b)(6)(B), Oct. 22, 2004, 118 Stat. 1591, substituted “Special rules where section 754 election or substantial built-in loss” for “Optional adjustment to basis of partnership property” in item 743.

#### § 741. Recognition and character of gain or loss on sale or exchange

In the case of a sale or exchange of an interest in a partnership, gain or loss shall be recognized to the transferor partner. Such gain or loss shall be considered as gain or loss from the sale or exchange of a capital asset, except as otherwise provided in section 751 (relating to unrealized receivables and inventory items).

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 107-147, title IV, §417(12), Mar. 9, 2002, 116 Stat. 56.)

#### AMENDMENTS

2002—Pub. L. 107-147 struck out “which have appreciated substantially in value” after “inventory items”.

#### § 742. Basis of transferee partner's interest

The basis of an interest in a partnership acquired other than by contribution shall be determined under part II of subchapter O (sec. 1011 and following).

(Aug. 16, 1954, ch. 736, 68A Stat. 249.)

#### § 743. Special rules where section 754 election or substantial built-in loss

##### (a) General rule

The basis of partnership property shall not be adjusted as the result of a transfer of an interest in a partnership by sale or exchange or on the death of a partner unless the election provided by section 754 (relating to optional adjustment to basis of partnership property) is in effect with respect to such partnership or unless the partnership has a substantial built-in loss immediately after such transfer.

##### (b) Adjustment to basis of partnership property

In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in section 754 is in effect or which has a substantial built-in loss immediately after such transfer shall—

(1) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property, or

(2) decrease the adjusted basis of the partnership property by the excess of the transferee partner's proportionate share of the adjusted basis of the partnership property over the basis of his interest in the partnership.

Under regulations prescribed by the Secretary, such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. In the case of an adjustment under this subsection to the basis of partnership property subject to depletion, any depletion allowable shall be determined separately for the transferee partner with respect to his interest in such property.

##### (c) Allocation of basis

The allocation of basis among partnership properties where subsection (b) is applicable shall be made in accordance with the rules provided in section 755.

##### (d) Substantial built-in loss

###### (1) In general

For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than \$250,000 the fair market value of such property.

###### (2) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.

##### (e) Alternative rules for electing investment partnerships

###### (1) No adjustment of partnership basis

For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

###### (2) Loss deferral for transferee partner

In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

**(3) No reduction in partnership basis**

Losses disallowed under paragraph (2) shall not decrease the transferee partner's basis in the partnership interest.

**(4) Effect of termination of partnership**

This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

**(5) Certain basis reductions treated as losses**

In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be reduced by the amount of such basis reduction.

**(6) Electing investment partnership**

For purposes of this subsection, the term "electing investment partnership" means any partnership if—

(A) the partnership makes an election to have this subsection apply,

(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

(C) such partnership has never been engaged in a trade or business,

(D) substantially all of the assets of such partnership are held for investment,

(E) at least 95 percent of the assets contributed to such partnership consist of money,

(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering before the date which is 24 months after the date of the first capital contribution to such partnership,

(H) the partnership agreement of such partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and

(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

**(7) Regulations**

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.

**(f) Exception for securitization partnerships****(1) No adjustment of partnership basis**

For purposes of this section, a securitization partnership shall not be treated as having a substantial built-in loss with respect to any transfer.

**(2) Securitization partnership**

For purposes of paragraph (1), the term "securitization partnership" means any part-

nership the sole business activity of which is to issue securities which provide for a fixed principal (or similar) amount and which are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of.

(Aug. 16, 1954, ch. 736, 68A Stat. 249; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, § 71(b), July 18, 1984, 98 Stat. 589; Pub. L. 108-357, title VIII, § 833(b)(1)-(4)(A), (5), (6)(A), Oct. 22, 2004, 118 Stat. 1589, 1591.)

## REFERENCES IN TEXT

Section 3(a)(1)(A), (c)(1), (7) of the Investment Company Act of 1940, referred to in subsec. (e)(6)(B), is classified to section 80a-3(a)(1)(A), (c)(1), (7) of Title 15, Commerce and Trade.

## AMENDMENTS

2004—Pub. L. 108-357, § 833(b)(6)(A), substituted "Special rules where section 754 election or substantial built-in loss" for "Optional adjustment to basis of partnership property" in section catchline.

Subsec. (a). Pub. L. 108-357, § 833(b)(1), inserted "or unless the partnership has a substantial built-in loss immediately after such transfer" before period at end.

Subsec. (b). Pub. L. 108-357, § 833(b)(2), inserted "or which has a substantial built-in loss immediately after such transfer" after "section 754 is in effect" in introductory provisions.

Subsec. (d). Pub. L. 108-357, § 833(b)(3), added subsec. (d).

Subsec. (e). Pub. L. 108-357, § 833(b)(4)(A), added subsec. (e).

Subsec. (f). Pub. L. 108-357, § 833(b)(5), added subsec. (f).

1984—Subsec. (b). Pub. L. 98-369 substituted "property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share" for "an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account" in penultimate sentence.

1976—Subsec. (b). Pub. L. 94-455 struck out "or his delegate" after "Secretary".

## EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 833(d)(2), Oct. 22, 2004, 118 Stat. 1592, provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section and section 6031 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 2004].

"(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and section 743(e)(6)(I) of such Code, as so added, shall be applied by substituting '20 years' for '15 years'."

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98-369, set out as a note under section 704 of this title.

SUBPART D—PROVISIONS COMMON TO OTHER  
SUBPARTS

Sec.	
751.	Unrealized receivables and inventory items.
752.	Treatment of certain liabilities.
753.	Partner receiving income in respect of decedent.
754.	Manner of electing optional adjustment to basis of partnership property.
755.	Rules for allocation of basis.

**§ 751. Unrealized receivables and inventory items**

**(a) Sale or exchange of interest in partnership**

The amount of any money, or the fair market value of any property, received by a transferor partner in exchange for all or a part of his interest in the partnership attributable to—

- (1) unrealized receivables of the partnership,
- or
- (2) inventory items of the partnership,

shall be considered as an amount realized from the sale or exchange of property other than a capital asset.

**(b) Certain distributions treated as sales or exchanges**

**(1) General rule**

To the extent a partner receives in a distribution—

- (A) partnership property which is—
  - (i) unrealized receivables, or
  - (ii) inventory items which have appreciated substantially in value,

in exchange for all or a part of his interest in other partnership property (including money), or

- (B) partnership property (including money) other than property described in subparagraph (A)(i) or (ii) in exchange for all or a part of his interest in partnership property described in subparagraph (A)(i) or (ii),

such transactions shall, under regulations prescribed by the Secretary, be considered as a sale or exchange of such property between the distributee and the partnership (as constituted after the distribution).

**(2) Exceptions**

Paragraph (1) shall not apply to—

- (A) a distribution of property which the distributee contributed to the partnership,
- or

- (B) payments, described in section 736(a), to a retiring partner or successor in interest of a deceased partner.

**(3) Substantial appreciation**

For purposes of paragraph (1)—

**(A) In general**

Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property.

**(B) Certain property excluded**

For purposes of subparagraph (A), there shall be excluded any inventory property if a principal purpose for acquiring such property was to avoid the provisions of this subsection relating to inventory items.

**(c) Unrealized receivables**

For purposes of this subchapter, the term “unrealized receivables” includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

- (1) goods delivered, or to be delivered, to the extent the proceeds therefrom would be treated as amounts received from the sale or exchange of property other than a capital asset, or
- (2) services rendered, or to be rendered.

For purposes of this section and,<sup>1</sup> sections 731, 732, and 741 (but not for purposes of section 736), such term also includes mining property (as defined in section 617(f)(2)), stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3)), stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1252(a), 1253(a), or 1254(a) would apply if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership at its fair market value. For purposes of this section and,<sup>1</sup> sections 731, 732, and 741 (but not for purposes of section 736), such term also includes any market discount bond (as defined in section 1278) and any short-term obligation (as defined in section 1283) but only to the extent of the amount which would be treated as ordinary income if (at the time of the transaction described in this section or section 731, 732, or 741, as the case may be) such property had been sold by the partnership.

**(d) Inventory items**

For purposes of this subchapter, the term “inventory items” means—

- (1) property of the partnership of the kind described in section 1221(a)(1),
- (2) any other property of the partnership which, on sale or exchange by the partnership, would be considered property other than a capital asset and other than property described in section 1231, and
- (3) any other property held by the partnership which, if held by the selling or distributee partner, would be considered property of the type described in paragraph (1) or (2).

**(e) Limitation on tax attributable to deemed sales of section 1248 stock**

For purposes of applying this section and sections 731 and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporation).

<sup>1</sup> So in original. The comma probably should not appear.