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.

§ 708. Continuation of partnership

(a) General rule

For purposes of this subchapter, an existing partnership shall be considered as continuing if it is not terminated.

(b) Termination

(1) General rule

For purposes of subsection (a), a partnership shall be considered as terminated only if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.

(2) Special rules

(A) Merger or consolidation

In the case of the merger or consolidation of two or more partnerships, the resulting partnership shall, for purposes of this section, be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(B) Division of a partnership

In the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) shall, for purposes of this section, be considered a continuation of the prior partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 244; Pub. L. 115–97, title I, § 13504(a), Dec. 22, 2017, 131 Stat. 2141.)

AMENDMENTS

2017—Subsec. (b)(1). Pub. L. 115–97 struck out dash after ''only if'' and subpar. (A) designation before ''no part'' and struck out subpar. (B) which read as follows: ''within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits''.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to partnership taxable years beginning after Dec. 31, 2017, see section 13504(c) of Pub. L. 115–97, set out as a note under section 168 of this title.

§ 709. Treatment of organization and syndication fees

(a) General rule

Except as provided in subsection (b), no deduction shall be allowed under this chapter to the partnership or to any partner for any amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in such partnership.

(b) Deduction of organization fees

(1) Allowance of deduction

If a partnership elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

(A) the partnership shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

(i) the amount of organizational expenses with respect to the partnership, or

(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

(2) Dispositions before close of amortization period

In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(3) Organizational expenses defined

The organizational expenses to which paragraph (1) applies, are expenditures which—

(A) are incident to the creation of the partnership;

(B) are chargeable to capital account; and

(C) are of a character which, if expended incident to the creation of a partnership having an ascertainable life, would be amortized over such life.

(Added Pub. L. 94–455, title II, § 213(b)(1), Oct. 4, 1976, 90 Stat. 1547; amended Pub. L. 108–357, title VIII, § 902(c), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 109–135, title IV, § 403(*ll*), Dec. 21, 2005, 119 Stat. 2632.)

AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–135 substituted ''partnership'' for ''taxpayer'' in introductory provisions and before ''shall be allowed'' in subpar. (A).

2004—Subsec. (b). Pub. L. 108–357 substituted ''Deduction'' for ''Amortization'' in heading, added par. (2), redesignated former par. (2) as (3), and amended heading and text of par. (1) generally. Prior to amendment, text of par. (1) read as follows: ''Amounts paid or incurred to organize a partnership may, at the election of the partnership (made in accordance with regulations prescribed by the Secretary), be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction ratably over such period of not less than 60 months as may be selected by the partnership (beginning with the month in which the partnership begins business), or if the partnership is liquidated before the end of such 60-month period, such deferred expenses (to the extent not deducted under this section) may be deducted to the extent provided in section 165.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.