

(B) Exception for stock in C corporation

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Aug. 16, 1954, ch. 763, 68A Stat. 247; Pub. L. 94-455, title XIX, §1901(b)(3)(D), Oct. 4, 1976, 90 Stat. 1792; Pub. L. 98-369, div. A, title I, §74(b), July 18, 1984, 98 Stat. 593; Pub. L. 105-34, title X, §1062(b)(3), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsecs. (a)(2), (c)(1). Pub. L. 105-34 substituted “section 751(d)” for “section 751(d)(2)”.

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

1976—Subsec. (a)(1), (2). Pub. L. 94-455 substituted “as ordinary income or as ordinary loss, as the case may be” for “gain or loss from the sale or exchange of property other than a capital asset”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales, exchanges, and distributions after Aug. 5, 1997, but not applicable to any sale or exchange pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such sale or exchange, see section 1062(c) of Pub. L. 105-34, set out as a note under section 724 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §74(d)(2), July 18, 1984, 98 Stat. 594, provided that: “The amendment made by subsection (b) [amending this section] shall apply to property distributed after March 31, 1984, in taxable years ending after such date.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

§ 736. Payments to a retiring partner or a deceased partner's successor in interest**(a) Payments considered as distributive share or guaranteed payment**

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, except as provided in subsection (b), be considered—

(1) as a distributive share to the recipient of partnership income if the amount thereof is determined with regard to the income of the partnership, or

(2) as a guaranteed payment described in section 707(c) if the amount thereof is determined without regard to the income of the partnership.

(b) Payments for interest in partnership**(1) General rule**

Payments made in liquidation of the interest of a retiring partner or a deceased partner shall, to the extent such payments (other than payments described in paragraph (2)) are determined, under regulations prescribed by the Secretary, to be made in exchange for the interest of such partner in partnership property, be considered as a distribution by the partnership and not as a distributive share or guaranteed payment under subsection (a).

(2) Special rules

For purposes of this subsection, payments in exchange for an interest in partnership property shall not include amounts paid for—

(A) unrealized receivables of the partnership (as defined in section 751(c)), or

(B) good will of the partnership, except to the extent that the partnership agreement provides for a payment with respect to good will.

(3) Limitation on application of paragraph (2)

Paragraph (2) shall apply only if—

(A) capital is not a material income-producing factor for the partnership, and

(B) the retiring or deceased partner was a general partner in the partnership.

(Aug. 16, 1954, ch. 736, 68A Stat. 248; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title VII, §701(u)(13)(B), Nov. 6, 1978, 92 Stat. 2918; Pub. L. 103-66, title XIII, §13262(a), (b)(2)(B), Aug. 10, 1993, 107 Stat. 541.)

AMENDMENTS

1993—Subsec. (b)(3). Pub. L. 103-66, §13262(a), added par. (3).

Subsec. (c). Pub. L. 103-66, §13262(b)(2)(B), struck out heading and text of subsec. (c). Text read as follows: “For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e).”

1978—Subsec. (c). Pub. L. 95-600 added subsec. (c).

1976—Subsec. (b)(1). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13262(c), Aug. 10, 1993, 107 Stat. 541, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 751 of this title] shall apply in the case of partners retiring or dying on or after January 5, 1993.

“(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any partner retiring on or after January 5, 1993, if a written contract to purchase such partner's interest in the partnership was binding on January 4, 1993, and at all times thereafter before such purchase.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges, and distributions taking place after Oct. 9, 1975, see section 701(u)(13)(C) of Pub. L. 95-600, set out as a note under section 751 of this title.

§ 737. Recognition of precontribution gain in case of certain distributions to contributing partner**(a) General rule**

In the case of any distribution by a partnership to a partner, such partner shall be treated as recognizing gain in an amount equal to the lesser of—

(1) the excess (if any) of (A) the fair market value of property (other than money) received in the distribution over (B) the adjusted basis of such partner's interest in the partnership immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution, or

(2) the net precontribution gain of the partner.

Gain recognized under the preceding sentence shall be in addition to any gain recognized under section 731. The character of such gain shall be determined by reference to the proportionate character of the net precontribution gain.

(b) Net precontribution gain

For purposes of this section, the term “net precontribution gain” means the net gain (if any) which would have been recognized by the distributee partner under section 704(c)(1)(B) if all property which—

(1) had been contributed to the partnership by the distributee partner within 7 years of the distribution, and

(2) is held by such partnership immediately before the distribution,

had been distributed by such partnership to another partner.

(c) Basis rules**(1) Partner’s interest**

The adjusted basis of a partner’s interest in a partnership shall be increased by the amount of any gain recognized by such partner under subsection (a). For purposes of determining the basis of the distributed property (other than money), such increase shall be treated as occurring immediately before the distribution.

(2) Partnership’s basis in contributed property

Appropriate adjustments shall be made to the adjusted basis of the partnership in the contributed property referred to in subsection (b) to reflect gain recognized under subsection (a).

(d) Exceptions**(1) Distributions of previously contributed property**

If any portion of the property distributed consists of property which had been contributed by the distributee partner to the partnership, such property shall not be taken into account under subsection (a)(1) and shall not be taken into account in determining the amount of the net precontribution gain. If the property distributed consists of an interest in an entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to property contributed to such entity after such interest had been contributed to the partnership.

(2) Coordination with section 751

This section shall not apply to the extent section 751(b) applies to such distribution.

(e) Marketable securities treated as money

For treatment of marketable securities as money for purposes of this section, see section 731(e).

(Added Pub. L. 102-486, title XIX, §1937(a), Oct. 24, 1992, 106 Stat. 3032; amended Pub. L. 103-465, title VII, §741(b), Dec. 8, 1994, 108 Stat. 5009; Pub. L. 104-188, title I, §1704(j)(8), Aug. 20, 1996, 110 Stat. 1882; Pub. L. 105-34, title X, §1063(a), Aug. 5, 1997, 111 Stat. 947.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105-34 substituted “7 years” for “5 years”.

1996—Pub. L. 104-188 provided that section 1937(a) of Pub. L. 102-486, shall be applied as if “Subpart B” appeared instead of “Subpart C”. Section 1937(a) of Pub. L. 102-486 directed amendment of subpart C of this part by adding this section at the end thereof.

1994—Subsec. (c)(1). Pub. L. 103-465, §741(b)(1), amended last sentence generally. Prior to amendment, last

sentence read as follows: “Except for purposes of determining the amount recognized under subsection (a), such increase shall be treated as occurring immediately before the distribution.”

Subsec. (e). Pub. L. 103-465, §741(b)(2), added subsec. (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to property contributed to a partnership after June 8, 1997, but not applicable to any property contributed pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such contribution if such contract provides for the contribution of a fixed amount of property, see section 1063(b) of Pub. L. 105-34, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 applicable to distributions after Dec. 8, 1994, and not applicable to certain 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.

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| 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.)