

§ 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 the partnership if—

(A) the partnership's adjusted basis in the partnership property exceeds by more than \$250,000 the fair market value of such property, or

(B) the transferee partner would be allocated a loss of more than \$250,000 if the partnership assets were sold for cash equal to their fair market value immediately after such transfer.

(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) 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.

(5) 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.

(6) 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 partnership 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; Pub. L. 115-97, title I, §§13502(a), 13504(b)(2), Dec. 22, 2017, 131 Stat. 2141, 2142.)

REFERENCES IN TEXT

Section 3(a)(1)(A), (c)(1), (7) of the Investment Company Act of 1940, referred to in subsec. (e)(5)(B), is classified to section 80a-3(a)(1)(A), (c)(1), (7) of Title 15, Commerce and Trade.

AMENDMENTS

2017—Subsec. (d)(1). Pub. L. 115-97, §13502(a), amended par. (1) generally. Prior to amendment, text read as follows: “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.”

Subsec. (e)(4) to (7). Pub. L. 115-97, §13504(b)(2), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4). Prior to amendment, text of par. (4) read as follows: “This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).”

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 2017 AMENDMENT

Pub. L. 115-97, title I, §13502(b), Dec. 22, 2017, 131 Stat. 2141, provided that: “The amendments made by this section [amending this section] shall apply to transfers of partnership interests after December 31, 2017.”

Amendment by section 13504(b)(2) of 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.

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) [now 743(e)(5)(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) [now 743(e)(5)(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.